767.

SUPREME COURT OF THE UNITED STATES.

No. 122.

THE PROPELLER MONTICELLO, JOHN WILSON, MASTER AND CLAIMANT, AND APPELLANT,

vs.

GILBERT MOLLISON, LIBELLANT.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE NORTHERN DISTRICT OF NEW YORK.

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Appeal.

Circuit court of the United States, for the second circuit and northern district of New York.

GILBERT MOLLISON, appellee,
vs.
The PROPELLER MONTICELLO, JOHN WILSON, claimant, appellant.

The above named claimant and appellant, conceiving himself aggrieved by the final decree entered on the seventh day of September, 1853, in the above entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States; and he prays that this, his appeal, may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

JOHN GANSON,
Proctor for claimant and appellant.

October 15, 1853.
Filed November 3, 1853.

Citation on appeal.

UNITED STATES OF AMERICA, *ss.*

To Gilbert Mollison, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, on the first day of the term next, pursuant to an appeal from a decree of the circuit court of the United States, for the northern district of New York, wherein John Wilson, claimant of the Propeller Monticello is appellant, and you are appellee; to show cause, if any there be, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the honorable Samuel Nelson, one of the justices of the said Supreme Court of the United States, this 20th day of October, in the year one thousand eight hundred and fifty-three.

S. NELSON.
DENNIS BOWEN,
Proct. for appellants.

Filed November 11, 1853.

I admit due service of the within citation, November 7th, 1853.

A. P. GRANT,
Proctor for respondent.

Circuit court of the United States, for the northern district of New York.

GILBERT MOLLISON, libellant and appellee,
vs.
The PROPELLER MONTICELLO, her tackle, apparel, &c., John Wilson, claimant and appellant.

UNITED STATES OF AMERICA,
Northern district of New York, ss.

I, Augustus A. Boyce, clerk of the circuit court of the United States of America, for the northern district of New York, in the second circuit, do hereby certify to the Supreme Court of the United States, that the pleadings, depositions, proceedings, and decree hereunto annexed, are true transcripts of their respective originals remaining on the files of my office in the above entitled cause.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this twelfth day of November, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the seventy-eighth.

[SEAL.]

AUGUSTUS A. BOYCE,
Clerk of U. S. circuit, northern district of N. Y.

UNITED STATES OF AMERICA,
Northern district of New York, ss.

I, Aurelian Conkling, clerk of the district court of the United States of America, for the northern district of New York, do hereby certify that the writings annexed to this certificate and to the citation and petition of appeal hereunto attached are true copies of their originals on file and remaining as of record in my office.

In testimony whereof, I have hereunto affixed the seal of the said court, at Auburn, in the aforesaid district, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States of America the seventy-seventh.

[L. S.]

AURELIAN CONKLING, *Clerk.*

United States of America, for the northern district of New York, to Gilbert Mollison, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States to be held at the village of Canandaigua, in and for the northern district of New York, on the Tuesday next following the third Monday of June next, pursuant to an appeal from a decree of the district court of the United States, for the said district, wherein John Wilson is appellant and you are appellee, to shew cause, if any there be, why the said decree should not be executed and speedy justice be done to the parties in that behalf.

Witness the honorable Alfred Conkling, district judge for the said district, this sixteenth day of May, in the year of our Lord one thousand eight hundred and fifty-two.

A. CONKLING.

Personally served on Gilbert Mollison, June 7th, 1852, by delivering a copy of the within precept, and leaving the same with the defendant in person, June 7th, 1852.

JOHN T. BUSH, *Marshal.*

Fees, $ By WM. H. SHUMWAY,
Special deputy.

I hereby authorize and depute W. H. Shumway to serve the within citation. JOHN T. BUSH, *Marshal.*
June 4, '52.

United States district court, for the northern district of New York,

GILBERT MOLLISON
vs.
The PROPELLER MONTICELLO, her tackle, apparel, &c., and John Wilson, respondent. } In admiralty.

The above named respondent, conceiving himself aggrieved by the final decree entered on the sixth day of May, in the year one thousand eight hundred and fifty-two, in the above entitled cause, doth hereby appeal therefrom to the next circuit court of the United States to be held in and for the said district, and he prays that this appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the said circuit court.

Dated Buffalo, May 12th, 1852. JOHN GANSON,
Proctor for the respondent.

At a special session of the district court of the United States of America, for the northern district of New York, held at the city of Auburn, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-two. Present, the honorable Alfred Conkling, district judge.

GILBERT MOLLISON
vs.
The PROPELLER MONTICELLO, her tackle, apparel, and furniture.

On the twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-one, Gilbert Mollison, the libellant in this cause, filed his libel before the aforesaid judge, against the said Propeller Monticello, her tackle, apparel, and furniture; and thereupon an order was entered directing the issuing of process against the said propeller in the following words, and the said libel is hereunto annexed.

At a special session of the district court of the United States of America, for the northern district of New York, held at the city of Auburn, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-one. Present, the honorable Alfred Conkling, district judge.

GILBERT MOLLISON
vs.
The PROPELLER MONTICELLO, her tackle, apparel, &c.

On filing a libel in this cause, and on motion of Mr. Grant, proctor for the libellant, it is ordered that a warrant of arrest and monition be issued herein, returnable the thirteenth day of May next.

And on the same day a warrant of arrest and monition was issued, returnable on the thirteenth day of May, 1851; and on the sixteenth day of May, 1851, the said warrant and monition, with the marshal's return endorsed thereon, was filed, and also a stipulation of the claimant of the said propeller, given on the release of the same from custody; which warrant, and monition, and return, and which stipulation are hereunto annexed. On the tenth day of June, 1851, an affidavit was filed which is hereunto annexed, and an order was entered in the following words:

At a special session of the district court of the United States of America, for the northern district of New York, held at the city of Auburn, on the tenth day of June, in the year of our Lord one thousand eight hundred and fifty-one. Present, the honorable Alfred Conkling, district judge.

GILBERT MOLLISON
vs.
The PROPELLER MONTICELLO, her tackle, apparel, &c.

On filing the affidavits, Lucas H. Pratt, and on motion of P. G. Clark, esquire, advocate, it is ordered that this cause stand over until the first Tuesday of July next.

On the 28th day of June, 1851, the answer of John Wilson, the claimant, was filed by John Ganson, esquire, his proctor, and on the eighth day of June, 1851, a replication was filed; which said answer and replication are hereunto annexed.

On the sixth day of April, 1852, a final hearing was had in the cause. On the thirteenth day of April, 1852, affidavits, which are hereunto annexed, were filed, and an order was entered in the following words:

At a special session of the district court of the United States of America, for the northern district of New York, held at city of Auburn, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-two. Present the honorable Alfred Conkling, district judge.

GILBERT MOLLISON
vs.
The PROPELLER MONTICELLO, her tackle, apparel, &c. John Wilson, claimant.

On reading and filing affidavit of John Ganson, esquire, proctor in this cause; and on motion therefor, it is ordered, that all proceedings in this cause be stayed until the twentieth of April instant.

(A copy.) AURELIAN CONKLING.

And on the sixth day of May, 1852, a final decree was entered in the following words:

At a special session of the district court of the United States of America, for the northern district of New York, held at the city of Auburn, on the sixth day of May, in the year of our Lord one thousand eight hundred and fifty-two. Present, the honorable Alfred Conkling, district judge.

GILBERT MOLLISON
vs.
The PROPELLER MONTICELLO, her tackle, apparel, &c., John Wilson, claimant and respondent.

This cause came before the court to be heard on the sixth day of April last, upon the pleadings therein, and testimony was taken in open court in support of the allegations in the libel contained; and thereupon, upon consideration thereof, the court doth order, adjudge, and decree, that the collision in the libel set forth occurred as therein stated; and that the schooner North Western, being the property of the libellant, was thereby wholly lost, together with her cargo, a portion of which was salt, also belonging to the libellant. And it is further ordered, adjudged, and decreed, that the libellant ought, by reason of the premises, to have and receive the sum of six thousand dollars as the value of said schooner, and the further sum of one hundred and fifty dollars as the value of the said salt. And it is further ordered and adjudged and decreed, that the claimant above named, within ten days after service upon him or his proctor, of a copy of this decree, pay into the registry of the court the aforesaid sums, amounting to six thousand one hundred and fifty dollars, together with the costs of the libellant in this suit to be taxed, and also the fees and expenses of the officers of the court in this suit to be taxed. And it is further ordered, adjudged, and decreed, that if the said claimant shall fail to make the payments above mentioned, as herein before directed, execution do forthwith issue against him and his sureties in the stipulation; whereupon the said propeller was delivered out of the custody of the marshal in virtue of the warrant heretofore issued in this suit. And it is further ordered, adjudged, and decreed, that if the said claimant shall make the said payments as hereinbefore provided, he be forever exonerated from all

other and further payments in the premises. Whereupon the said pleadings and such other papers as are required by the rules and practice of the court, are now attached together and hereto annexed, and the said final decree is signed and enrolled according to law, the day and year in the caption of this enrolment mentioned.

(Signed) A. CONKLING.

In admiralty.

To the judge of the district court of the United States, for the northern district of New York.

Gilbert Mollison, of the city of Oswego, in the county of Oswego, and State of New York, owner of the schooner North Western, of Oswego, hereafter mentioned, exhibits this libel against the Propeller Monticello, whereof James Mitchell is, or lately was, master, now lying in the port of Buffalo, in the northern district of New York aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for the interest therein in a cause of collision, civil and maritime, and therefore the said Gilbert Mollison doth allege and articulately propound as follows, to wit:

First. That the said schooner "North Western" *as* a vessel of more than twenty tons burthen, to wit, of the burthen of three hundred tons or thereabouts, and, at the time when the cause of action herein after mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States and Territories of the United States, upon the lakes and navigable waters connecting the said lakes.

Second. That on the fifteenth day of September, 1850, the aforesaid schooner, being tight, staunch, and well manned and provided, sailed from the port of Oswego, in the State of New York, with a valuable cargo of salt, on a voyage to the port of Chicago, in the State of Illinois; that during the said voyage from Oswego to Chicago, to wit, about half-past eight o'clock in the evening of the thirteenth day of September, 1850, the said schooner, being then about ten or twelve miles from Presque Isle on Lake Huron, and from five to eight miles from land, and sailing with a fair breeze, and her course being west-northwest, the wind being then about south-southwest, one of the hands of the said schooner, who was then on deck, being on the look-out, descried a light ahead, and soon after discovered that the light was produced by sparks, which proved to be sparks proceeding from the smoke-pipe of the Propeller Monticello. That as soon as the said hand had as aforesaid discovered the said light and the approach of the said propeller, the man at the helm of the said schooner North Western, Joseph Keehly, was ordered to port his helm, and to keep the schooner off another point, which would give the said propeller a good birth on the larboard side of *of* the said schooner, the North Western, and which

order was obeyed. That a large and brilliant light was at this time, and when the said propeller was distant from the said schooner from four to six miles, raised and held up over the larboard cat-head of the said schooner, and which was easily discoverable at a long distance. That immediately after said light was raised as aforesaid, the master of the said schooner, S. G. Gibbs, went aft and stood by the man of the helm, and ordered him to steer steady, that those on board of the said propeller might not mistake the course the said schooner was steering, and which course was west-northwest. That there was no light visible to the master of the said schooner on the said propeller, except the sparks from the smoke-pipe, and the propeller seemed to be steering on her course down the land. That after standing and watching the propeller, the master of the said schooner saw the said propeller forward of the beam of the said schooner; that the said master then went forward and closely watched the said propeller's course, and after close observation the master saw the propeller steering directly for the schooner, towards and close to her, and then ordered the man at the helm to put it hard a-port, and hailed the hands on board of said propeller as loudly as he could, to the effect that she was going to run the schooner down. That then the said propeller, within a minute or two, struck the said schooner aft of the forward gangway on her larboard side, and stove into her bow for about two feet, and so greatly injured the said schooner that she sunk almost immediately after this collision, and was with her cargo totally lost, her officers and crew having got but about sixty feet from said schooner when she sunk, by taking to her small boat.

Fourth. That the said propeller, by which the said damage had been done, proved to be the Monticello aforesaid; at the time of the said collision was under the command of James Mitchell, who was the mate of said propeller, and bound on a voyage down the lake; that at the time when the light from the propeller, which proved to be a light caused by the sparks from her smoke-pipe as herein before mentioned, was discovered, the schooner North Western carried a light suspended from her mast-head, and had previous thereto, and also a light was raised and held up over the schooner's larboard cat-head as before stated, and which remained there until she was struck; that the said light could have been seen at a considerable distance, had said propeller kept a good lookout, and in time to have enabled her to give way for the said North Western, as she was bound to do, and thereby to prevent a collision therewith.

Fifth. That the said propeller was at the time of the said collision in the command of James Mitchel, and was a vessel of fifty tons burthen and upwards, and duly enrolled and licensed, and then actually engaged and employed in the business of commerce and navigation between ports and places in different States and Territories, upon the lakes and navigable rivers connecting said lakes, then being on lake Huron, and at the place aforesaid bound down the lake, and the said James Mitchel, being such acting master of the said propeller Monticello, took so little and such bad care of the said propeller, and the

said propeller was so carelessly and negligently managed, controlled, and directed by the said acting master and the mariners, officers, and crew thereof, that the said propeller, by and through the carelessness, negligence, misdirection, and mismanagement of the said propeller, and not by or through any default, omission, carelessness, or mismanagement of your libellant or the master, mariners, officers, or crew of the said schooner, the North Western, then and there, on said 30th day of September, 1850, on Lake Huron as aforesaid, with great force and violence ran foul of and struck against the said schooner of your libellant, and thereby sunk shortly, and as your libellant believes, within twenty minutes after the said collision, with the entire cargo of salt, whereby the said schooner and the said salt became and was wholly lost to your libellant.

Sixth. That at the time when the danger of a collision between the said vessels was first perceived as aforesaid from the North Western, it was impossible for her to get out of the way of the said Monticello, nor were there any means to which she could have resorted with propriety for that purpose.

Seventh. That at the time of the aforementioned loss of the said schooner the North Western and her cargo, the libellant was the true and lawful owner of the said schooner, and of twelve hundred bags of dairy salt, a portion of her said cargo, and that the schooner was of the value of six thousand dollars, and the twelve hundred bags of salt of the value of two hundred dollars or thereabouts, and that by reason of the carelessness, negligent, unskilful and improper management of the said Propeller Monticello, and of the collision thereby occasioned of the said propeller with the said schooner North Western, the libellant has sustained damage to the amount of eight thousand dollars or thereabouts, for which he claims reparation in this suit.

Eighth. That all and singular the premises are true, wherefore the libellant prays that process in due form of law may issue against the said Propeller Monticello, her engine, machinery, boats, tackle and apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid, and decree that the same be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and the court is competent to give in the premises.

GILBERT MOLLISON.
A. P. GRANT, *Proctor.*

NORTHERN DISTRICT OF NEW YORK.

On this 19th day of April, 1851, personally appeared before me, Gilbert Mollison, the above named libellant, and being by me duly sworn, said that he has heard read the foregoing libel signed by him, and knows the contents thereof, and that he believes the same to be true in substance and matter of fact.

WM. H. SHUMWAY,
Com. U. S. Court.
GILBERT MOLLISON.

UNITED STATES OF AMERICA,
Northern district of New York, in admiralty.

The answer of John Wilson, master and claimant of the Propeller Monticello, her engine, machinery, boats, tackle, apparel and furniture, to the libel of Gilbert Mollison against the said propeller, her engine, &c.

And now comes John Wilson, master and claimant of the said Propeller Monticello, and for answer to the libel of the said Gilbert Mollison alleges and propounds, viz:

First. That the said propeller was in the possession of him, the said John Wilson, at the time the same was arrested on the process issued in pursuance of the prayer of the said libel as master thereof, and that the same was released to him as claimant by the said marshal, from the arrest made under said process, upon the execution of a stipulation executed under and in pursuance of the act of Congress passed the third day of March, A. D. 1847, and that Sheldon McKnight, of Detroit, is the true and bona fide owner of the said propeller, and that no other person is the owner thereof, and that he, the said John Wilson, was the lawful bailer of the said propeller for the said owner at the time of the arrest aforesaid.

Second. That it is true that the schooner North Western was a vessel of more than twenty tons burthen, but whether the said schooner was owned by the libellant above named, or whether, at the time of the alleged collision in the said libel mentioned and referred to, the said schooner was enrolled and licensed for the coasting trade, this respondent has no knowledge, information or belief, and therefore he neither admits or denies the same, but leaves the said libellant to make such proof relative thereto as he shall be advised is material or necessary for him to make; but he admits she was engaged in the business of commerce and navigation between the ports and places in the first article of said libel mentioned.

Third. In answer to the second article of the said libel, this respondent says, that he has not any knowledge, information or belief as to whether, on the fifteenth day of September, one thousand eight hundred and fifty, the aforesaid schooner was staunch, tight, well manned and provided, and therefore he neither denies or admits the same, but leaves the libellant to make such proof relative thereto as he shall be advised is material or necessary for him to make; but he admits she sailed from the port of Oswego on a voyage for the port of Chicago with a cargo of salt, but whether the cargo of salt was a valuable one, or of what value, this respondent has not any information, knowledge or belief, and therefore leaves the libellant to make such proof as to the value thereof as he shall be able or advised to make in regard thereto.

Fourth. That it is true that the said schooner, at the time in the said second article of the said libel stated, was in about the location in said article mentioned, and that the wind was about south-southwest; but this libellant has not any knowledge, information or belief, as to what

was discovered or done by those on board of the said schooner, or as to what orders were given to them, and therefore neither denies nor admits the same as stated in the said second article of the said libel, but leaves the libellant to make such proof relative thereto as he shall be able or advised to make. This respondent admits there was a light on board of the said schooner, but avers that the same was a plain one, and that the course of the said schooner could not be determined thereby, but has not knowledge or information sufficient to state in what part of the schooner the same was, and therefore neither admits or denies the allegations in said article made relative to the position thereof, but leaves the libellant to make such proof relative to the position thereof as he shall be able or advised to make; and this respondent admits there was a collision between the said propeller and schooner, and that the said schooner sunk at the time in the said libel mentioned; and the said *and the said* respondent avers, that there was proper lights on the said propeller during the entire evening of the day of the said collision, and prior to and at the time of the said collision, and that the same were easily discernible to those who were sailing another craft upon the lake; and this respondent believes that the persons on the said schooner and having charge thereof could easily discern the lights on board of the said propeller, and at a sufficient distance to determine thereby the course of the said propeller.

Fifth. That it is true the said propeller was at the time of the said collision in the command of James Mitchell, and that it was a vessel of fifty tons burthen and upwards, and was duly enrolled and licensed, and then actually engaged and employed in the business of commerce and navigation between the ports and places in the fifth article of said libel stated, and that the collision in the said article mentioned occurred; but this respondent expressly denies that the same was occasioned by the negligence, carelessness or mismanagement of the said master and other officers and crew of board of the said propeller, or of either or any of them, and denies that the same did not occur through any default, omission, carelessness or mismanagement of the libellant, master, mariners, officers or crew of the said schooner; but this respondent says, that the said collision was occasioned by the fault of those having charge of the said schooner, as he verily believes and he so avers the fact to be.

Sixth. That this respondent has not knowledge or information sufficient to form a belief as to whether, when the danger of the said collision was first discovered by those on board of the said schooner, it was impossible for the said schooner to get out of the way, or whether there were any means after such discovery to which she could have resorted to with propriety for that purpose.

Seventh. That this respondent has not any knowledge or information as to whether the libellant was the true owner of the said schooner at the time of the said collision, nor as to the amount of value of salt on board of the said schooner, nor whether the libellant owned the same, nor what the value of the said schooner was; and he therefore neither admits nor denies the allegations relative thereto in the seventh article

of the said libel, but leaves the libellant to make such proof in regard thereto as he shall be advised or able to make; but he denies that the same were destroyed and the libellant has sustained the damage in the said article specified, by reason of the carelessness, negligent, unskilful, or improper management of the said propeller.

Eighth. That all and singular the premises in the said libel are not true, as is alleged in the eighth article of said libel.

Ninth. That the said propeller was at the time of the said collision on her way from Chicago to Buffalo; and on the evening of the thirtieth of September, in the said libel mentioned, and when the said propeller was off Presque Isle, about 15 miles *and* above it, and about 6 miles from the Michigan shore, the light of the said schooner North Western was observed by the persons on board of the said propeller; the night was dark, the wind south-southwest, and there was about one-eighth knot breeze, and the propeller was on her course east-southeast, and continued to run on that course a short time after making the light of said schooner. From the light of said schooner she appeared far in shore, but to give her more lake room and an abundant opportunity to continue her course, the said propeller bore away into the lake about three quarters of a point, and from the appearances then the said vessel was on her course to go between the propeller and the shore, at a great distance in shore from the course of the said propeller. The proper lights of the propeller were all hung out and burning at the time the light of the vessel was first discovered as aforesaid, which was when the schooner was some five miles distant to all appearances. The said propeller kept on her course, and giving the said schooner more room to pass between the propeller and the shore on the right of the said propeller, and the master of the said propeller supposed the said schooner was continuing her course until she approached so near as to enable the said master to discern her canvass, and he then discovering that the said schooner had her helm a-port, and that this would inevitably bring the said propeller in collision with the said schooner, for the purpose of avoiding such collision, sung out hard a-port, which order was obeyed immediately, but the distance was too short for the propeller to swing, and she struck the schooner a little abaft the forward gangway, which was the same collision as that mentioned and referred to in the said libel. The said schooner varied from her course instead of keeping on it direct; and had she continued on her direct course instead of continually bearing to the right, she would have steered entirely clear of the said propeller, and the collision would have been avoided; but this was not, and could not be discovered by the persons having command of the said propeller until she approached near enough to discern the canvass of the said schooner. That the collision was occasioned by the said schooner not keeping on her course, and not from any fault, misdirection, mismanagement, or negligence of the master, mate, or other persons having charge of the said propeller, but was occasioned by the fault, negligence, unskilfulness, and mismanagement of the persons having charge of the said schooner.

Tenth. That this respondent is informed and believes, and so avers the fact to be, that at the time the said collision took place, all the interest of the owner of said cargo and schooner was insured by the North Western Insurance Company, and that the said schooner and cargo were abandoned by the said owner to such insurance company, prior to the filing of the libel in this case, and accepted by such company, and that the said company, prior to the filing of the said libel, paid such insurance money to the libellant, as the owner of said schooner and cargo, in full of his interest therein as owner; by reason whereof this respondent claims and insists that the said libellant cannot maintain this suit, and that the said libel should be dismissed.

Eleventh. That all and singular the premises herein contained are true. Wherefore, this respondent prays that this court will pronounce judgment against the demand of the libellant in his aforesaid libel mentioned and set forth, with costs.

JOHN WILSON,
By HIRAM NILES.
JOHN GANSON, *Proctor*.
WILLIAM H. GRANE, *Advocate*.

UNITED STATES OF AMERICA,
Northern district of New York, ss.

On this 27th day of June, A. D. 1851, personally appeared before me, Hiram Niles, who being by me duly sworn said, that the respondent was, when he last heard from him, and is, as he now believes, on Lake Superior; that he, the deponent, had been directed by the respondent and the owner of the propeller in the above answer named, who resides in the city of Detroit, in the State of Michigan, as their agent, to cause to be drawn and filed an answer to the said libel in said answer referred to; that he, the deponent, had the facts in said answer stated collected as such agent, and has heard read the said answer and knows the contents thereof, and that he believes the same to be true in substance and matter of fact.

H. K. SMITH,
U. S. commissioner.

UNITED STATES DISTRICT COURT,
Northern district of New York.

GILBERT MOLLISON vs. The Propeller MONTICELLO, her engine, tackle, apparel, and furniture, and John Wilson, master and claimant.	In admiralty.

And the said libellant, by way of replication to the said claim and answer of the said John Wilson, master of the said propeller and claimant, doth aver, that the matters in the said claims and answer are not

true in fact and sufficient in law to bar the said claim of the said libellant, and that the matters contained in the said libel are true in fact and sufficient in law to maintain a decree, according to the prayer thereof. All which matters he is ready to make due proof, as the court shall direct.

GILBERT MOLLISON,
A. P. GRANT, *Proctor*.

NORTHERN DISTRICT OF NEW YORK.

On the 5th day of July, 1851, personally came before me, Gilbert Mollison, the above named libellant, and being by me duly sworn, said, that he had read the foregoing replication signed by him, and knows the contents thereof, and that he believes the same to be true in substance and matter of fact.

WM. H. SHUMWAY,
Com. U. S. court.

UNITED STATES OF AMERICA,
Northern district of New York, ss.

The President of the United States of America, to the marshal of the northern district of New York, and to his deputy, whomsoever, greeting:

You are hereby jointly and severally empowered and strictly enjoined and commanded, that you arrest the vessel called the Propeller Monticello, (whereof James Mitchell now is or late was master,) her boats, tackle, apparel, and furniture, if she shall be found within your district; and the same so arrested you keep under safe and secure arrest until you shall receive further orders from the said court, or the same shall be discharged in due course of law; and that you cite at the premises all persons in general who have, or pretend to have, any right, title, or interest therein, to appear before the judge of the district court of the United States of America for the northern district of New York, at the city of Auburn, on the thirteenth day of May next, if it be a court day, or else on the court day next following, at 10 o'clock in the forenoon, there to answer unto Gilbert Mollison, of the city of Oswego, in a cause of collision, civil and maritime, and further to do and receive in this behalf as to justice shall appertain; and that you duly certify the judge of the aforesaid court what you shall do in the premises, together with these presents.

Witness the honorable Alfred Conkling, judge of the aforesaid court, at the city of Auburn, this twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-one.

Action for $8,250 00.

AURELIAN CONKLING, *Clerk*.
A. P. GRANT, *Proctor*.

I have attached the within named Propeller Monticello, her tackle, apparel, and furniture, and have cited all persons having, or pretend-

ing to have, any right or interest therein, as by the within warrant I am commanded to do.

JOHN T. BUSH,
U. S. marshal.
G. B. GATES,
Deputy.

May 12th, 1851.

On this 25th day of April, in the year one thousand eight hundred and fifty-one, before me, H. K. Smith, a commissioner duly appointed and empowered to take acknowledgments of bail, affidavits, and depositions, &c., within the district of the northern district of New York, Gilbert Mollison, of the city of Oswego, against the Propeller Monticello, her engine, &c., in a cause tort, moved and prosecuted in the district court of the United States for the aforesaid district, which day appeared personally John Wilson as claimant of the said propeller, and produced for sureties Lucius H. Pratt and Hiram Niles, of the city of Buffalo, in the county of Erie and State of New York; and the said John Wilson, Lucius H. Pratt, and Hiram Niles, submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators, in the sum of sixteen thousand dollars, unto the said Gilbert Mollison; and that the said John Wilson shall abide, answer the decree of the said court in the aforesaid cause; and unless he shall do so, they do hereby severally consent that execution shall issue forthwith against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same may be found, to the value of the sum above mentioned.

JNO. WILSON,
LUCIUS H. PRATT,
HIRAM NILES.

This same day taken and acknowledged before me, this 25th day of April, 1851, as such commissioner.

H. K. SMITH,
U. S. commissioner.

UNITED STATES OF AMERICA,
Northern district of New York, ss.

Appeared personally, Lucius H. Pratt and Hiram Niles, of the city of Buffalo and State aforesaid, commission merchants, and made oath that they are respectively worth the sum of sixteen thousand dollars, of lawful money of the United States of America, after the payment of their just debts.

LUCIUS H. PRATT,
HIRAM NILES.

On the 25th day of April, A. D. 1851, the above named Lucius H. Pratt and Hiram Niles were sworn to the truth of the above attestation before me,

H. K. SMITH,
U. S. commissioner.

CUSTOM-HOUSE, *Buffalo, April* 25, 1851.

I hereby certify, that I am acquainted with Lucius H. Pratt and Hiram Niles, the sureties to the within stipulation, and consider them responsible for the amount therein specified, and I hereby approve the same.

WM. KETCHUM, *Collector*.

DISTRICT COURT OF THE UNITED STATES,
For the northern district of New York.

GILBERT MOLLISON,
vs.
The Propeller MONTICELLO, her tackle, apparel, &c. } In admiralty.

UNITED STATES OF AMERICA,
For the northern district of N. York, ss.

Lucius H. Pratt and Hiram Niles being duly sworn, did severally depose and say, and each for himself says, that this suit is instituted by libel to recover damages for an alleged collision; that these deponents owned the Propeller Monticello, which was arrested by the process issued in this cause at the time it is alleged in and by the said libel that the collision took place, and that they, after that time and some time during the month of April last, sold the said propeller to Sheldon McKnight, who is now the owner thereof, as these deponents believe. And these deponents further state, that in and by the bill of sale of the said propeller, they inserted covenants which they are advised and believe make them liable for any damages, if such there may be, which shall be recovered for the said alleged collision, and that they have assured us, between themselves and the owner of the said propeller, to defend the suit by reason thereof; and that on the 25th day of April, A. D. 1851, these deponents executed a stipulation under and in pursuance of the act of Congress passed the 3d day of March, A. D. 1847, entitled An act for the reduction of costs and expenses in proceedings in admiralty against ships and vessels, and delivered the same to the marshal who had arrested the said propeller, under and by virtue of process issued in this cause, upon the filing of the libel aforesaid, and the said marshal thereupon discharged the said propeller from arrest. And these defendants further that they are personally wholly unacquainted with the facts and circumstances relating to the alleged collision, and the present owner of the said propeller, who resides at Detroit, in the State of Michigan, is also unacquainted with the same, as this deponent believed; that John Wilson was the master of said propeller, and that the same was in charge of James L. Mitchell, mate of the said boat at the time of the said alleged collision, and that they are now both absent from this State, and are somewhere on the western lakes, and have been ever since a copy of the said libel filed in this cause was procured, which was procured on the 30th day of April last, from the clerk of this court.

And these deponents further say, that it has not been possible for them to collect the facts relative to the said alleged collision, since procuring a copy of the said libel as aforesaid, so as to enable them to answer the said libel; and these deponents expect the arrival of the said Wilson from the upper lakes in a few days, and it is impossible for these deponents to prepare and put in an answer to the said libel in behalf of themselves and the owner of the said propeller, before the return of the said Wilson and Mitchell.

And these deponents further say, that from the facts which have been communicated to them generally by the mate and master of the said propeller, they believe the collision arose from the fault of the libellant or the persons in his employ, and they believe they have a good and substantial defence to the said libel.

And these defendants further say, they have been requested by and have agreed to defend this suit by reason of their liability aforesaid, with the aforesaid present owner of the said propeller, and that they make this application in pursuance of such arrangement.

And these defendants are informed by John Ganson, their proctor in this suit, that the process issued therein is returnable on the thirteenth instant; and further they say not.

LUCIUS H. PRATT,
HIRAM NILES.

Subscribed and sworn to before me this 10th day of May, A. D. 1851, at the city of Buffalo.

WELLS BROOKS,
Clerk of Erie county and the courts thereof, Com. U. S.

Filed October 19th, 1852, in U. S. circuit court.

(*Copy Judge's minutes of testimony.*)

TUESDAY, *April* 6, 1852.

GILBERT MOLLISON
vs.
The PROPELLER MONTICELLO,
John Wilson, claimant.
} Collision.—Judge's minutes.

Mr. Grant, for libellant, states case. The schooner North Western—Lake Huron, ½ past 8, p. m. 30th September, 1850; night dark.

Samuel G. Gibbs.

Seaman since 1835 or '6; was master of the North Western; she was owned by Gilbert Mollison; was on a voyage from Oswego to Chicago. Her cargo consisted of 1475 barrels of salt, and 1200 sacks of dairy salt; the latter belonged to Mr. Mollison. 30th September, 1850, 6 p. m., we passed Presque Isle; our course then was N. N. W. until about ½-past 8; at that time the lookout said he saw a light; I went forward and saw sparks ahead, about as I suppose 5 or 6 miles off. We were then about 6 or 8 miles from the Michigan shore. The wind was

about S. S. W., and we were going at about 6 to 8 knots; the approaching sparks appeared to be dead ahead; they appeared and disappeared at intervals; I told the helmsman to keep *to keep* the schooner off a point. He did so and brought her to head N. W. by W., as I saw a few minutes after on looking at the compass and by making the sparks off our larboard boom. I remained standing near the helmsman until very shortly before the collision. From that point I could see the approaching sparks as clearly as when standing forward. When we first descried the sparks we had a bright light standing on a high box, provision chest forward of the cook room about 20 feet from the stern. There was nothing in front of the light to obstruct it except the foremast. The lower sail was not so low as to obstruct it. I think it was not. I think the boom was four and a half to five feet high. The box on which the light stood I should think was about 4 feet high, perhaps 4½. Immediately after we descried the sparks I ordered the man, the look-out, to take the lamp and hold it up over the weather cat-head; he did so. The cat-head is about 5 or 6 feet from the stern; it is forward of the foremast. The weather cat-head was on the side on which the sparks appeared. The man continued to hold the light there until a moment before the collision. I remained the principal part of the time near the helmsman; I attended to nothing else except the approaching sparks; I saw no other light until after the collision, when a man came with a globe lamp and held it out between decks. I am of opinion that the vessel carried no light. If there had been one visible I should have seen it. I could observe no change in the course of the approaching vessel until very shortly before the collision, when she appeared to be nearly abreast of us. When one of the hands asked me if I did not think the propeller had changed her course, I answered I thought not, but on observing more closely I thought she had. I then walked amidships and stooped down to look over the surface of the water. I then for the first time thought I could discover a black mass, but could discern no definite outline; my inference was that it was a vessel approaching us, and that she was very near, not to exceed twice her length. I then ordered the helmsman to put the helm to port; he did so. At the same time I gave the order to give her more main-sheet, which was attempted. Then immediately our light reflected on the bow of the approaching vessel, and I saw that it was a propeller coming into us. She immediately struck us; she proved to be the Monticello of Buffalo. She hit us abaft the forward gangway about midships, on the larboard side, striking us about at right angles. She cut our plank-shear through, and two of the deck planks. The breach extended several feet under water, probably 5 or 6 feet. I held the lamp over the side to see to what extent the schooner was injured, and saw that there was no probability of saving her. We got on board the propeller, and the schooner sunk in less than three minutes. After giving the order to port the helm there was not time before the collision for the schooner to feel the effect of the change much. It was the mate's watch; his name is Joseph Braman. The watch

consisted of Joseph Hetchler and Francis H. Granger; they and the mate, myself and another man, Thomas B. Beckwith, were on deck all the time; no one had *had* turned in. Immediately before the collision I hailed "Propeller ahoy." The schooner had run 3 years; she was well manned and in all respects well provided. She was worth $6,000. The salt in bags was worth 12½ cents a sack, $150. The night was very dark, but the weather was otherwise good. I think the engine of the propeller was going till the time of the collision.

Joseph Braman.

Seaman 15 years; was mate on board the North Western at the time of the disaster. I was on deck; I watched the approaching sparks closely; my recollection of the facts coincides with that of Captain Gibbs. I know from the compass that the order to put off the schooner a point was executed. I saw no light on board the approaching vessel. I heard the propeller's bell ring just before the collision; not soon enough to stop her engine. I think the schooner was worth $6,000.

Joseph Kitchley.

Seaman since 1831; on the ocean over 14 years; since on the lakes. I was on board the North Western as a seaman at the time of the collision. I was at the tiller; had been there about ½ an hour. I recollect the order to keep off; I obeyed it and afterwards saw the sparks. They bore over our larboard side. I ran by the compass; the sparks appeared only at intervals. We kept on that course until the collision. I recollect the order immediately before the collision to keep her off; I obeyed the order but we were struck instantly. My recollection coincides with that of Captain Gibbs. I could see no light on board of the propeller until after the collision.

Francis H. Granger.

I was on board the North Western as a seaman at the time of the collision. I acted at the time as a look-out. I first saw the sparks and told the captain, and asked him if that was the Bois Blanc light. My recollection of the subsequent occurrences and facts coincides with his. When I went on board the propeller there was some pretence among her people that she had a light, and the steward said it was on the pilot house. I went to look and found a lamp, but it was not burning.

Captain Wm. Morgan.

I was acquainted with the schooner North Western in 1850. I am a seaman 16 years. For the last 3 years I have been employed as surveyor of the North Western Insurance Company. I had examined the North Western in the spring of 1850, and know her from the time she was on the stocks. I think she was fully worth $6,000.

Decree for $6,150.

I certify the foregoing to be a true copy of the judge's minutes taken on the hearing of the above entitled cause.

In testimony whereof I have hereunto affixed the seal of the said court, and signed my name, the 1st day of October, A. D. 1852.

[L. S.]

AURELIAN CONKLING.

Filed October 19, 1852.

(*Copy depositions in circuit court.*)

NORTHERN DISTRICT OF NEW YORK,
County of Erie, ss.

Be it remembered, that on the eighth day of October, one thousand eight hundred and fifty-two, at the city of Buffalo, county of Erie, and in the northern district of New York, application was made to me, James Sheldon, county judge of Erie county aforesaid, upon the affidavit of Lucius H. Pratt, stating that he resides at Buffalo, in said county of Erie. That ever since the commencement of a suit in the United States circuit court for the northern district of New York, in admiralty, wherein John Wilson, claimant of the Propeller Monticello, her tackle, etc., was appellant, and Gilbert Mollison was appellee, he had *had* charge thereof on the part of the defence in connection with Hiram Niles, on behalf of said claimant, and knew better than did said claimant in regard to the same.

That said Wilson did not reside in the said northern district of New York, and that he was during the whole of the last season and then was upon Lake Superior at some place there, but that he could not state the place of residence of the said Wilson particularly.

That the said Lucius H. Pratt had the charge, as aforesaid, of the preparing the said cause for trial, and had himself become acquainted with the facts thereof and the witnesses, and the materiality of each of the witnesses in said affidavits and hereinafter named; that the testimony of Francis P. Billings of Buffalo, Robert Wagstaff of Detroit, Israel T. Palmer of Buffalo, Alonzo D. Perkins and Edgar H. Spencer of Ohio city, James S. Mitchell of Buffalo, John Maguire of Canada West, Giles Y. Ransom of Buffalo, Levi Allen of Buffalo, Benjamin Bagnall of Buffalo, Jacob W. Banta and Frederick W. Jones of Buffalo, and each and every of whom he, the said Pratt, expected to be at Buffalo on the 26th, 27th, 28th, and 29th days of October, 1852, was material and necessary for him, the said appellant and claimant in the defence of said suit. That they all lived and resided as afore stated herein, and more than one hundred miles from Albany, in the said northern district of New York, where the court at which he, the said Lucius H. Pratt, expected the said cause would be tried was appointed by law to be held. That the said appellee, and also A. P. Grant, his proctor, both resided at Oswego, New York, and about 230 miles distant from Buffalo aforesaid, and the place where the examination of the said witnesses was expected to be taken. And I was requested on behalf of the said John Wilson that the said above named witnesses might be examined according to the direction of the act of Congress in such case made and provided.

Whereupon I ordered that the said Francis P. Billings, Robert Wagstaff, Israel T. Palmer, Alonzo D. Perkins, Edgar H. Spencer, James S. Mitchell, John Maguire, Giles T. Ransom, Levi Allen, Benjamin Bagnall, Jacob W. Banta, and Frederick N. Jones should be examined de bene esse before me at my office in Buffalo, on the 26th, 27th, 28th, and 29th days of October, 1852, at 10 o'clock, a. m. of the said respective days, and that fifteen days' notice should be given to the said A. P. Grant of such examination, to the end that he might, if he should see fit, be present at the examination and put interrogatories. And I having satisfactory proof that such notice had been given, and as well the said John Wilson, by John Ganson, his proctor, and the said Gilbert Mollison, by the said A. P. Grant, his proctor, appearing before me at my office, in Buffalo aforesaid, on the twenty-seventh day of October, 1852, I have therefore proceeded with the said examination.

And the said James S. Mitchell, being carefully examined and cautioned and duly sworn to testify the whole truth and nothing but the truth, saith: I reside in the city of Buffalo. I am a sailor. I have been engaged in the business of sailing since the year 1845. I was on the Propeller Monticello in the year 1850. I was on her in the capacity of first mate. I was on board of her at the time there was a collision between her and the schooner North Western. It was in the month of September, 1850. I had charge of the propeller on that trip. We were bound from the port of Chicago to Buffalo. The collision occurred upon Lake Huron, ten or twelve miles above Presque Isle.

Question. Did you see the light of the schooner North Western?

Answer. Yes, sir.

Question. When and where did you first see it?

Answer. I saw it about a point on our starboard bow. It was probably about ten o'clock in the evening. I cannot state positively about the time. It was probably about twenty minutes before the collision.

Question. What kind of light was it?

Answer. It was a plain light.

Question. What was your course?

Answer. East-southeast.

Question. Had you any light on the propeller? If so, what were they?

Answer. We had a signal light on the pilot house.

Question. Describe it.

Answer. It was a three-cornered triangular lamp; one side of it was a red light, that was on the larboard side, and a green light on the starboard side. It was the ordinary signal light.

Question. Was the light burning?

Answer. Yes, sir.

Question. When you first saw the light did you know what it was the light of?

Answer. I took it for the Presque Isle light.

Question. How long a time was it from your first seeing it before you found it to be the light of a vessel?

Answer. I knew it was the light of a vessel in three minutes after I saw it. After I looked at it a few moments I knew it was a vessel light, because the Presque Isle light is a revolving light.

Question. Where were you on the propeller?

Answer. I was on deck; the forecastle deck, forward of the pilot house; that is what we call the forecastle deck.

Question. Were you on the lookout?

Answer. I was; it was my watch.

Question. Was any body else on the lookout on the propeller?

Answer. No, sir.

Question. Were there any other hands on deck? If so, how many and who were they?

Answer. The watch were up all over the boat; the first engineer was on watch.

Question. Where?

Answer. He was down aft by the engine; also one fireman on watch, he was down by the engine too; and two or three deck hands, at least two, on watch; they were on the main deck; and one wheelsman on watch; he was at the wheel. The wheel is in the pilot house.

Question. What kind of a night was it?

Answer. It was very dark.

Question. Was it clear or cloudy?

Answer. It was cloudy, and a little overcast.

Question. How fast was the propeller sailing at the time you discovered the light?

Answer. Between eight and nine miles an hour.

Question. What was the direction and force of the wind at that time?

Answer. The wind was about south-southwest. It was blowing about a 6 or 8 knot breeze.

Question. When you discovered that the light was the light of a vessel, what direction was it from your vessel?

Answer. It was about a point on our starboard bow.

Question. When you discovered that the light was the light of a vessel, what did you do?

Answer. I kept her off a point more to the eastward.

Question. How long was it from this time until the collision?

Answer. I should judge it was from fifteen to twenty minutes.

Question. On what course did that bring your vessel?

Answer. East by south.

Question. Where was the light of the vessel then in reference to you?

Answer. It brought it about two points on our starboard bow.

Question. How long did the light of the vessel remain two points on the starboard bow? I mean in reference to the distance between the vessel and propeller.

Answer. The light was gradually growing more on our starboard bow, till it got off three or four points on our starboard bow.

Question. How near were the vessels to each other when the light of the schooner was three or four points on your starboard bow?

Answer. They proved to be pretty close together. Looking at a light in the night steadily for some time you cannot judge of the distance so well as you can when you first see it. I supposed she was at that time two miles off.

Question. Was she that distance in fact?

Answer. No, sir. She was not.

Question. How far was she?

Answer. About the time when she got about four points on our starboard bow, she was so close to us that the light flashed up so bright that I saw she was a great deal closer than I had calculated for. I was on the pilot house at this time. She proved to be within half a mile of us.

Question. What did you then do?

Answer. When the light flashed up, as I told you just now, I saw we was so close to her I told the wheelsman to starboard his wheel.

Question. When you told the wheelsman to starboard the wheel, on which side was the schooner?

Answer. She was on the starboard side; she was on the starboard side all the while from the time I first saw her.

Question. How much was she on the starboard side at the time you told the wheelsman to starboard the wheel?

Answer. About four points then.

Question. Describe what was done from this time up to the time of the collision, and the manner in which the collision occurred.

Answer. When I told him to starboard his wheel, and before he got it a starboard, the vessel had got so close to us that the light shone on her canvass, so that I could see which way she was going or heading. She was heading right across our bows. I then ordered him (the wheelsman) to steady, and put his wheel hard to port. I rung the bell to stop the engine at the same time, and then I rung to back her. Just as they got to backing the engine the vessel was right across our bows, and the propeller hit the vessel just abaft the forward gangway on the larboard side.

Question. Had you changed your course in any other respects than you have here stated after you first saw the vessel's light, up to the time of the collision?

Answer. No, sir.

Question. Had the schooner changed its course?

Answer. That I could not say, you know, but I suppose she must, or she could not have crossed our bow.

Question. How many lights did you see on board the schooner?

Answer. One only, and that the plain one I described.

Question. Did you see any moving light on the schooner?

Answer. No, sir.

Question. At what rate was the schooner sailing?

Answer. Between 6 and 8 miles an hour, I should judge.

Question. What was the course of the schooner from the time you first discovered her light till she was four points on your starboard bow?

Answer. Well, the course from Presque Isle, going up to Mackinaw, is west-northwest, and I suppose she was steering that course.

Question. Is that the regular course at that place for vessels bound up?

Answer. It is with a fair wind. It is with such a wind as she had then. She could lay her course then. The wind was on her quarter, if she was steering that course.

Question. If the schooner had been sailing west-northwest, and kept her course, could there have been a collision of the two vessels after you first changed the course of the propeller?

Answer. No, sir, there could not.

Question. Had the vessel been where her light, when you first saw it, indicated she was, and sailing west-northwest, and had she changed her course only one point to the northward, could there have been a collision of the two vessels?

Answer. No, sir.

The witness is here shown a diagram, marked exhibit A, in this cause.

Question. Does this diagram show correctly the position of the propeller at the time you discovered the light of the vessel and her courses and distance until the time of the collision?

Answer. Yes, sir.

Question. Does a propeller smoke-pipe throw out sparks so that they can be seen nights at a distance?

Answer. The Monticello's does; some do and some do not.

Question. Can you determine the course the propeller is pursuing by the sparks and its light?

Answer. Yes, sir. When I can see her signal lights and her sparks, I can.

Question. How?

Answer. Suppose I see it coming right towards me, I can tell by the signal light being in a range with the sparks that she is coming towards me. If she swings one way or the other, then it will bring the light on one side or the other of the range of the sparks, according to which way she swings. If she swings to starboard, it would fetch her lights on my larboard hand if I was going towards her. If she swings to port, it would fetch it on the starboard hand.

Question. What distance was there between the place where the signal lights of the propeller were and her chimney?

Answer. I should think it was about 90 feet on the Monticello.

Question. Did the collision have any effect on your signal light; and if so, what was it?

Answer. It capsized the lamp in the lantern, and put it out.

Question. Was there any thing which you might have done that you did not do to avoid the collision after it became imminent?

Answer. No, sir; I could do nothing more than I did after I saw the vessel.

Question. How far was Bois Blanc island, upon which the light-house is, from the place of collision?

Answer. It is 60 miles from that island to Presque Isle, and we were some 10 or 12 miles to the northward and westward of Presque Isle.

Question. Are there two passes by Bois Blanc island; if so, what are they called?

Answer. There are two; they are called the north and south passages.

Question. If a vessel is bound up, and has passed Presque Isle, how much variation from west-northwest must be its course to put for the north passage?

Answer. Half a point.

Question. If going to the south passage, from Presque Isle, what course does a vessel steer?

Answer. West-northwest, and the two courses vary about half a point for the different passes.

Question. What is the width of the south passage?

Answer. It varies from three to five miles, and the width of the other is probably a quarter of a mile.

Question. In steering for either of these passes, are you governed in your course by the light on Bois Blanc island?

Answer. We generally calculate to steer such a course as to bring that light nearly ahead.

Question. Which pass is generally taken by vessels bound to or from Chicago?

Answer. The south pass.

Question. When is the north pass taken?

Answer. When we want to stop at Mackinaw.

Question. At what angle did the propeller hit the schooner?

Answer. Very near at right angles.

Question. What course was the schooner then sailing?

Answer. About north.

JAS. L. MITCHELL.

Subscribed and sworn to before me, this 27th day of October, 1853.

JAS. SHELDON,
Erie county Judge.

And being duly cross examined by A. P. Grant, esq., counsel for the appellee, therein and on the part and behalf of said appellee, the said James L. Mitchell saith:

Question. What is your age, and how long have you resided in Buffalo?

Answer. My age is 23, and I have resided in Buffalo, off and on, since 1845. Sometimes I have lived here, and part of the time else-

where; part of the time I have lived at Detroit, St. Louis, and New Orleans, and Buffalo during the last five years.

Question. Who was the master of the Propeller Monticello, and who constituted her crew at the time of the collision?

Answer. John Wilson was master; I was mate. I cannot tell who was second mate then, as about that time we changed our second mate. The one who had been second mate had been discharged, and went wheelsman on the propeller, and the man who had been wheelsman was made second mate. They were both on board. The other wheelsman was John McGuire. The engineer, the first engineer's name was Ransom; I cannot remember his first name. The second engineer was Ira Bowen. The clerk's name was Brown. The steward's name was Francis Jackson; he was a white man. I cannot name the firemen; there were two of them. I cannot say how many deck hands there were that trip; there were at least four. Sometimes we had six; I cannot name any of them. There was one waiter, and one porter, and two cooks. Aaron Bladen was one cook, and George Bladen the other. The porter's name was Oscar Jackson. I do not know the waiter's name. I think I have mentioned all the crew.

Question. During what part of this voyage had you acted as master?

Answer. I am unable to say whether I had acted for the whole of this voyage as master or not, but I remember the captain came on board at Detroit after the collision, and came with us to Buffalo.

Question. Can you tell where Wilson left the vessel on that trip?

Answer. No, sir, I cannot.

Question. When did you leave Chicago on that trip?

Answer. I cannot give you the day of the week or the day of the month. I believe it was in September.

Question. Was you loaded; and if so, what with?

Answer. We were loaded, but I do not recollect what with.

Question. What was the tonnage of the Monticello?

Answer. I do not recollect her tonnage.

Question. How many engines had she?

Answer. Two.

Question. What was their power each?

Answer. I do not know that.

Question. What was your usual speed in good weather?

Answer. It was according to what trim she was in. If in good trim, ten miles an hour. If loaded, say generally about nine miles an hour.

Question. How long had you been on board the Monticello at the time of the collision?

Answer. I went on board of her in the spring.

Question. In what capacity did you first go on board of her?

Answer. As second mate.

Question. When did you leave the propeller?

Answer. I stayed on her until she laid up in the fall at Chicago.

Question. Did you ever sail on her after that year?

Answer. No, sir.

Question. When you first discovered the light of the schooner, how far do you think the propeller was from land?

Answer. About six miles, I should think.

Question. How far was the schooner from you at the time you first discovered her light?

Answer. Eight or ten miles.

The further examination of the witness was here adjourned until Thursday, October 28th, 1852, at 9 o'clock a. m.

At which time the said parties all appeared by their counsel, as aforesaid, and the witness being further cross examined, saith:

Question. How long was it from the time you first saw the schooner's lights until the collision?

Answer. About twenty minutes.

Question. How long was it from the time you first saw the light, and supposed it to be a vessel light, till the collision?

Answer. Between 15 and 20 minutes.

Question. How far was she from you at that time when you supposed it was a vessel light?

Answer. Probably six or seven miles.

Question. Were you able to distinguish her sails at any time?

Answer. Not until just before the collision.

Question. How near were you to her when you could distinguish her sails?

Answer. We were right close on to her then. It was not probably more than five or six lengths from us.

Question. Where were you when you first discovered her light?

Answer. I was standing on deck forward of the pilot house.

Question. Describe where you continued from that time to the time of the collision.

Answer. I stood there until I satisfied myself it was a vessel's light, and as soon as I was satisfied it was a vessel's light, I went on top of the pilot-house and remained there till the collision.

Question. How soon did the collision occur after you went on the pilot-house?

Answer. About fifteen minutes.

Question. Had you given any orders from the time you discovered the light till the collision; and if so, what, and to whom?

Answer. When I first went on to the pilot-house I ordered the wheelsman to keep her off a point, to starboard his wheel a point. He kept her off a point, and we ran along that way till the light flashed up, as I testified yesterday, and we were close to her, and I then told him to starboard his wheel; while he was putting his wheel a-starboard and before he got it over, I discovered the vessel's sails and saw which way she was heading, which was across our bows, and then ordered him to steady and put his wheel hard aport; at the same time I rung the bells to stop and then to back, and that is all the orders I gave, and the collision occurred at once. There is a hole through the top of the pilot-house so I could see the wheelsman and talk to him.

Question. Did you converse with any other person after you saw the light till the collision; and if so, with whom?

Answer. When I first discovered the light, Mr. Ransom, the engineer, was on deck talking with me; he stood there and had been there a minute or so. He just came up from below; soon as we discovered the light he asked me what light that was; I told him I thought it was Presque Isle light, and he merely said that he thought it was or that it was about time to make that light, and that was all that transpired. He went down immediately to his engine. I do not recollect of conversing with any one else.

Question. How was your watch divided that night?

Answer. It was the larboard watch on deck. My watch, consisting of myself, the wheelsman, John McGuire, the 1st engineer, Mr. Ransom, one fireman whose name I do not know, and two or three deck hands whose names I do not know.

Question. Where is McGuire and Ransom?

Answer. Mr. Ransom is engineer on the Propeller Buffalo, and McGuire is in the city somewhere.

Question. Were there any passengers on board at the time?

Answer. I do not recollect of any; the steward's wife was on board, and a passenger by the name of Samuel Deming, and another by the name of E. M. Hale; that is all, I believe. They were dead-heads and not passengers.

Question. Had the passengers gone to bed?

Answer. I can't say; they were inside, at any rate.

Question. Did the wheelsman put his wheel to port when you gave him the order; and if so, what was the effect of it?

Answer. He did, but the effect could not have been much.

Question. Did he put his wheel to starboard when you gave that order; and if so, what was the effect of that?

Answer. I gave that order twice, but the time last just before the collision, when I told him to starboard, he was doing so, but had not got it over when I told him to steady, and I do not think it affected the course of the vessel materially, probably not a point. As soon as I saw the vessel's sails I trusted to the engines, and not the wheel, to clear her.

Question. Were not these orders and the collision almost simultaneous?

Answer. Yes, sir; probably all done inside of two minutes.

Question. Did you ring the bell about the time you gave the orders?

Answer. Yes, I did so when I told him to steady.

Question. What became of the schooner after the collision?

Answer. She ranged by us off on our larboard bow and sunk.

Question. How soon did she sink after the collision?

Answer. I should think she went down in about five minutes.

Question. Who made the diagram, marked exhibit A?

Answer. I am not sure who made it, I do not know.

Question. When and where did you first see it?

Answer. I am not sure whether it was in Judge Walker's office, or Mr. Green's office.

Question. On what occasion did you first see it?

Answer. It was about the time I was examined before Judge Walker as a witness in this case.

Question. Were there any other persons examined on that occasion besides yourself before Judge Walker; and if so, whom?

Answer. There were, Mr. Ransom and John McGuire were examined before Judge Walker also.

Question. When was this examination?

Answer. Last spring in this city.

Question. Did you ever measure this diagram with a scale or in any other way to see if it was correct?

Answer. No, sir.

Question. Have you any knowledge that it is accurate otherwise than from your eye?

Answer. I have not.

Question. Coming into Lake Huron, which pass did you take on that trip?

Answer. I do not recollect now.

Question. When did you pass the foot of Bois Blanc island on that trip?

Answer. I cannot say as we passed it. It depends upon which passage we took, whether we passed it.

Question. At about what time did you pass the island?

Answer. In the latter part of the afternoon.

Question. What is the distance from the island to the place of collision?

Answer. About 48 or 50 miles.

Question. How do you know that the collision capsized your lamp?

Answer. Because it put it out, and next morning when I went on top of the pilot-house to take her out of Presque Isle, the top of the house was covered with oil, or there was a streak of oil all the way from the lamp down. It had run out of the lamp.

Question. Had you been to see the lamp from the time of the collision to the next morning when you went on top of the pilot-house?

Answer. I had. I had been to see it, and found it was out.

Question. What did you do when you found it was out?

Answer. I did nothing, we were then in sight of Presque Isle going in, and the light was not lighted again that night.

Question. You said you put your vessel off one point to the eastward; did that put the propeller more into the lake or more towards shore?

Answer. More into the lake.

Question. Did you carry sails on the propeller, and were any used at the time of the collision?

Answer. We carried foresail and jib; they were not used that night.

JAMES L. MITCHELL.

Subscribed and sworn to before me, the 28th day of October, 1852.

JAMES SHELDON,
Erie county judge.

A true copy.

JAMES SHELDON,
Erie county judge.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said James L. Mitchell, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Buffalo, October 28, 1852.

JAMES SHELDON,
County judge of Erie county.

A true copy.

JAMES SHELDON,
Erie county judge.

NORTHERN DISTRICT OF NEW YORK,
Erie county, ss.

Be it remembered, that on the 21st day of March, one thousand eight hundred and fifty-three, at the city of Buffalo, county of Erie, and in the northern district of New York, application was made to me, James Sheldon, United States commissioner in and for the said northern district of New York, duly appointed and authorized to take oaths, acknowledgments of bail, and depositions, in and for said district, upon the affidavit of Hiram Niles, stating he resided at Buffalo, in said county of Erie. That ever since the commencement of a suit in the United States circuit court, for the said northern district of New York, in admiralty, wherein John Wilson, claimant of the propeller Monticello, her tackle, etc., was appellant, and Gilbert Mollison was appellee, he had had charge thereof on the part of the said claimant, and knew better than did said claimant in regard to the same. That the said Wilson did not reside in the said northern district of New York, and that he, the said Wilson, was, during the whole of the last season and then was, upon Lake Superior at some place there, but that he could not state the place of his residence particularly. That he, the said Hiram Niles, had the charge of preparing the said cause for trial, and had himself become acquainted with the facts thereof and the witnesses in said affidavit and hereinafter named. That the testimony of Giles T. Ransom, James S. Mitchell, Francis P. Billings, Israel T. Palmer, Albert B. Conkey, William Dickson, Harry Whittaker, Augustus Walker, and Edgar H. Spencer, of Buffalo, in said county of Erie, John McGuire, of Dunville, Canada West, but at present in Buffalo aforesaid, and Francis M. Jackson and Oscar F. Jackson, of Dun-

kirk, in the county of Chautauque, New York, Robert Wagstaff, of Detroit, in the State of Michigan, and Alonzo D. Perkins, of Monroe, in the State of Michigan, all of whom are mariners, was material and necessary for him, the said appellant and claimant, in the defence of said suit. That they all lived and resided as above stated herein, and more than one hundred miles from Canandaigua, in the said northern district of New York, where the court at which the said Hiram Niles expected the said cause would be tried, was appointed by law to be held. That the said appellant and also A. P. Grant, esq., his proctor, both resided at Oswego, New York, and about 213 miles distant from Buffalo aforesaid, and the place where the examination of the said witnesses was expected to be taken. And I was requested on behalf of the said John Wilson, that the said above named witnesses might be examined according to the directions of the act of Congress in such case made and provided.

Whereupon, I ordered that the said Giles T. Ransom, James S. Mitchell, Francis P. Billings, Israel T. Palmer, Alonzo D. Perkins, Albert B. Conkey, Robert Wagstaff, William Dickson, Harry Whittaker, Augustus Walker, Edgar H. Spencer, John McGuire, Francis M. Jackson, and Oscar F. Jackson should be examined de bene esse before me at my *at my* office in the city of Buffalo aforesaid, on the fifth, sixth, seventh, eighth, and ninth days of April, 1853, at ten o'clock in the forenoon of the said respective days, and that twelve days' notice should be given to the said A. P. Grant of such examination, to the end that he might, if he should see fit, be present at the examination and put interrogatories. And I having satisfactory proof that such notice had been given, and as well the said John Wilson, by John Ganson, his proctor, and the said Gilbert Mollison, by the said A. P. Grant, his proctor, appearing before me at my office in Buffalo aforesaid, on this sixth day of April, 1853, I have therefore proceeded with the said examination.

And the said William Dickson being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith: I reside in Black Rock, Erie county, New York; I am a sailor, a master; I am the master of the Propeller Illinois; I have sailed upon the lakes thirty years and over. I have been in the trade from Buffalo to Chicago.

Question. What is the regular course in sailing from Presque Isle, through the Straits of Mackinaw, bound for Chicago?

Answer. West-northwest.

Question. Suppose a sailing vessel bound up, and is twelve miles above Presque Isle, and is six or eight miles from the Michigan shore, with the wind south-southwest, and pursuing a course of west-northwest, makes the light of a steamer right ahead, bound down, what course should the sailing vessel pursue?

The counsel for the appellee objects to the question as irrelevant and immaterial.

Answer. She ought to keep on her course; I should at all events.

Question. Suppose that the steamer bound down makes the light of a vessel one point to the starboard, under the circumstances stated in the last interrogatory, which side of the sail vessel would it be proper for the steamer to go?

Answer. The steamer should go to the leeward of the vessel.

Question. If a sail vessel makes the light of a steamer right ahead, pursuing the course, and with the wind, as mentioned in the first interrogatory, is hit by the steamer on the vessel's larboard side, at right angles, abaft the forward gangway and near midship, what must have occurred to have brought the vessels into that connection?

Answer. Both of them must have kept away into the lake, I should think.

Question. How much must the vessel have deviated from her course; more than one point?

Answer. It would depend upon the course the propeller was steering.

Question. Suppose the propeller was steering east by south and kept on that course?

Answer. The vessel must have been heading to the eastward of north to be struck in that way.

Question. Suppose the vessel was pursuing a course of west-northwest, with the wind south-southwest, what tacks would she have aboard?

Answer. Her larboard tacks. W. DICKSON.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner, &c.

And being duly cross examined by A. P. Grant, esq., counsel for the appellee therein, and on the part and behalf of the said appellee, the said William Dickson saith:

Question. What is the distance from Presque Isle to Bois Blanc lighthouse?

Answer. About fifty-five miles, I should think; I never knew the distance exactly.

Question. If a vessel had passed Presque Isle some twelve or fifteen miles, bound for the south pass, what would be her usual course?

Answer. West-northwest, if she passed by Presque Isle within the proper distance.

Question. If her crew saw the sparks of an approaching steamer some six or eight miles off, on her larboard bow, what would have been the course of the steamer?

Answer. I wish to know on what part of the deck the man stands who saw the light.

Question. Suppose he stood at the helm?

Answer. I wish to know how far on the larboard bow the sparks were seen.

Question. Suppose they are seen one point on the larboard bow?

Answer. I could not tell what her course would be.

Question. What do you suppose her course would have been under such circumstances?

Answer. I could not tell at first observation, sir; I might after a time, by keeping my own vessel on her course.

Question. Under such circumstances, could you have told the position of the steamer, whether she was in shore or not?

Answer. If I was on board of the vessel, and looking at the compass, I could tell, I suppose.

Question. Would it have been possible, standing at the leeward of the tiller, to have seen the steamer, unless she was in shore?

Answer. I don't know; that depends whether the canvass was in the way.

Question. Suppose the master of the schooner, on seeing the sparks ahead, had put his vessel off one point, what would have been her course?

Answer. Northwest by west.

Question. After putting her off this point, how would that have brought the sparks on the steamer?

Answer. It would have brought them more on the larboard bow of the schooner.

Question. You say the steamer should go to leeward; would that take her more into the lake?

Answer. I should think it would, sir.

W. DICKSON.

Subscribed and sworn to, this 6th day of April, 1853, before me,

JAS. SHELDON,

United States commissioner, &c.

And the said Israel T. Palmer being carefully examined and cautioned, and duly sworn to testify the truth, and nothing but the truth, saith:

I reside at Tonawanda, Erie county, New York. I am a sailor by occupation; I am master of the Propeller Cataract; I have followed sailing for twenty years; I have been master for four seasons, the past four seasons—three seasons in sail vessels, and one in a propeller. I have sailed from Buffalo to Chicago.

Question. Do you know the course to pursue from Presque Isle through the Straits of Mackinaw, bound for Chicago; if so, what is it?

Answer. I do; the course is west-northwest.

Question. Suppose a sailing vessel bound up, and is twelve miles above Presque Isle, and is six or eight miles from the Michigan shore, with the wind south-southwest, and pursuing a course of west-northwest, makes the light of a steamer right ahead, bound down, what course should the sailing vessel pursue?

Answer. The vessel should keep on her course of west-northwest.

Question. If a sail vessel makes the light of a steamer right ahead, pursuing the course, and with the wind as mentioned in the first interrogatory, is hit by the steamer on the vessel's larboard side, at right an-

gles, abaft the forward gangway and near midships, what must have occurred to have brought the vessels in that connection?

Answer. Their courses must have been altered amazingly, and into the lake.

Question. Which must have changed its course the most?

Answer. I should say the vessel.

Question. Suppose the propeller was steering east by south, and kept on that course, how much must the vessel have deviated from her course to have brought the vessels in the connection stated?

Answer. The vessel must have been heading to the neighborhood of north for the steamer to have hit her at right angles on the larboard side.

Question. Suppose that the sail vessel, pursuing the course mentioned in the first interrogatory, made the light of the steamer one point to the larboard, could the steamer hit the vessel on the larboard side, at right angles, unless the vessel changed her course more than one point?

Answer. No, sir.

I. T. PALMER.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner, etc.

And being duly cross examined by A. P. Grant, esq., counsel for the appellee therein and on the part and behalf of the said appellee, the said Israel T. Palmer saith:

My age is thirty-three.

Question. Suppose the schooner is sailing northwest by west, and saw the propeller's light one point on her larboard bow, five or six miles off, could not the steamer by changing her course have hit the vessel on the larboard side at right angles?

Answer. Not without running in shore and then keeping out in the lake again.

Question. Were not these vessels pursuing nearly opposite courses?

Answer. One going up and the other coming down in that locality would be pursuing directly opposite courses, if pursuing their proper courses.

Question. From the testimony you have given in this case, do you suppose or understand these two vessels to have been pursuing nearly opposite courses, when five or six miles apart?

Answer. I do.

Question. If so, and the vessel put off one point so as to be sailing northwest by west, could not the steamer when nearly abreast of the schooner have changed her course so as to have hit the vessel on her larboard side at right angles?

Answer. I should think not; I should think that when they came together, they would come so near head on that it would have been a glancing blow, instead of at right angles.

Question. If the vessel was sailing west-northwest and saw the sparks nearly ahead five or six miles off, and put off one point so as to see the sparks more over her larboard bow, and the steamer was steering east-southeast, could the collision have occurred unless the steamer changed her course?

Answer. The collision could have occurred under such circumstances, but not at right angles.

Question. Suppose under the circumstances last named, the schooner was sailing about six miles an hour, and the propeller eight to ten miles an hour, could the collision have occurred?

Answer. I could not say positively whether it could or not, but I should think it would have brought them very near together.

Question. Are the courses of northwest and by west, and the course east-southeast, opposite courses?

Answer. They are not.

I. T. PALMER.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And the said Augustus Walker being carefully examined, and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith:

I reside in Buffalo, Erie county, New York; I am at present inspector of steamboats under the late act of Congress; I have heretofore been a mariner on the lakes for thirty years; I have been in different capacities; I have been a master for twenty-five years on both vessels and steamers; I have been very frequently from Buffalo to Chicago. Since 1832, I have been engaged in the trade between Buffalo and Chicago with the exception of the last two or three years.

Question. Suppose a sailing vessel bound up and is twelve miles above Presque Isle, and is six or eight miles from the Michigan shore, with the wind south-southwest and pursuing a course of west-northwest, makes the light of a steamer right ahead bound down, what course should the sailing vessel pursue?

Answer. She should keep her course.

Question. Suppose that the steamer bound down makes the light of a vessel one point to the starboard, under the circumstances stated in the last interrogatory, which side of the sail vessel would it be proper for the steamer to go?

Answer. The steamer should bear up and go to the leeward of the vessel, if she alters her course; if she saw the sail vessel over her starboard bow she would of course go to the leeward of her, but for safety it would be right for her to go more to leeward, as the vessel is bound to keep her course.

Question. If a sail vessel makes the light of a steamer right ahead, pursuing the course, and with the wind as mentioned in the first interrogatory, is hit by the steamer on the vessel's larboard side at right

angles abaft the forward gangway and near midship, what must have occurred to have brought the vessels into that connection?

Answer. They both must have kept off to the northward of the course they were pursuing when they first saw each other.

Question. Which must have deviated the most?

Answer. They must have deviated exactly alike to strike at right angles if they were both under the same speed. I ask to correct myself a little. The schooner must alter her course the most to have been struck at right angles, because two vessels meeting on a right line, if they deviate alike from it, they cannot strike at right angles.

A. WALKER.

Subscribed and sworn to before me, this 6th day of April, A. D., 1853. JAS. SHELDON,
United States commissioner, etc.

And being duly cross examined by A. P. Grant, esq., counsel for the appellee therein and in the part and behalf of the said appellee, the said Augustus Walker saith:

Question. Suppose the vessels were on opposite courses five or six miles apart when the man at the helm of the schooner discovered the sparks ahead, and put his vessel off one point into the lake, could the collision have occurred unless the steamer changed her course?

Answer. If they were steering on the same line directly towards each other, and the vessel should alter her course one point and the steamer not alter hers at all, the collision could not occur.

Question. Suppose the schooner was sailing west northwest, and the man at the helm discovers sparks of the approaching vessel five or six miles off which was sailing east-southeast, and puts the schooner off one point, could the collision have occurred unless the steamer changed her course?

Answer. It could not.

Question. Could the collision have occurred under such circumstances, whether the vessels were on the same line or not?

Answer. It could have occurred if the steamer when discovered was to the leeward of the vessel, but otherwise not.

Question. On a fore and aft schooner with the sails all set, could the man at the helm have discovered sparks of a steamer at the leeward?

Answer. He could not see to leeward by looking on a right line fore and aft with his vessel.

Question. If the helmsman saw the light over the larboard bow sailing northwest by west, under the circumstances above stated, could the collision have occurred unless the steamer changed her course, the vessel continuing her course?

Answer. I think not.

Question. Under the circumstances mentioned in the last question, could not the steamer when nearly abreast of the schooner have changed her course so to have struck the schooner on her larboard side nearly at right angles?

Answer. She could have done it by swinging one quarter of the compass less one point; she could not have struck at right angles in any other way.

Question. If the vessel when five or six miles off was sailing northwest by west, and each vessel had continued its course, how far apart would they have passed each other?

Answer. I cannot answer that positively; they would pass each other at some little distance. A. WALKER.

Subscribed and swcrn to before me, this 6th day of April, 1853.
JAS. SHELDON,
United States commissioner, etc.

And being re-examined by John Ganson, counsel for the appellants therein and on the part and behalf of the appellants, the said Augustus Walker saith:

Question. The course of the vessel being west by northwest, and the wind south-southwest, would the vessel have the wind abeam?

Answer. She would have it abeam.

Question. Where would the man at the helm stand under the circumstances?

Answer. He would stand at the wheel near the centre of the vessel; under such circumstances a vessel always carries a weather helm.

Question. Having a weather helm, would it not bring the helmsman more to the larboard than to the starboard side of the vessel's centre?

Answer. If she carried a strong weather helm he would be probably more to the larboard.

Question. Would that enable him to see further to the leeward?

Answer. Yes, sir.

A. WALKER.

Subscribed and sworn to before me, this 6th day of April, 1853.
JAS. SHELDON,
United States commissioner.

And the said Giles T. Ransom being carefully examined, and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:

I reside in Buffalo, Erie county, New York; I am an engineer on the lakes, and have been for ten years; I was engineer of the Propeller Monticello at the time of the collision and on board of her; I saw the light of the schooner prior to the collision.

Question. What was its bearing from the propeller?

Answer. About a point to the starboard of the propeller and in towards the shore.

Question. What kind of a light was it?

Answer. A white light.

Question. Where were you just prior to the time of the collision?

Answer. At the engines.

Question. What took place just prior to the collision?

Answer. Fifteen minutes prior to the collision I was up forward. I saw the mate there; he had charge; the mate was Mr. Mitchell. We spoke about the light; we made the remark that this light was pretty well in shore; I went below then to the engines; in about fifteen minutes I got a bell to stop the engines; I stopped them; then I got bells to back; I made two or three turns back, and then the collision occurred; I saw the schooner then; I looked out of the gangway; she was standing to the northward, heading off into the lake; I saw the signal light of the propeller burning when I was on deck, fifteen minutes before the collision; it was on top of the pilot-house.

G. T. RANSOM.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And being duly cross examined by A. P. Grant, esq., counsel for the appellee therein and on the part and behalf of the said appellee, the said Giles T. Ransom saith:

Question. How far were you from Presque Isle when you first saw the vessel's light?

Answer. In the neighborhood of fifteen miles. We were about an hour and three-quarters before we got to Presque Isle; I should think we were out about eight miles from land; the schooner's light was about five or six miles off when I first saw it; when I saw it last, it was after the collision; I do not know the course the propeller was sailing, exactly.

Question. What must have been her course coming down?

Answer. I cannot tell without looking on a map. She was on her course down the lake. Never had charge of a vessel as a pilot. I do know the points of compass at that place. I did not see the compass on board of the propeller that evening. It was not far from ten o'clock at night; a star-light night, so clear I could see the loom of the land. When I went on deck I believe McGuire was at the helm, but am not positive it was him. I did not go into the pilot-house. I did not see any one in the pilot-house. I did not look to see. I went forward of the pilot-house and spoke to the mate. I did not see any one there but the mate. I returned to the same engine I started from. I went directly to the engines. I went nowhere else except on deck after I left the engines, and from there back to the engines. I did not see any other man but the mate while I was gone. The fireman was close to me at the time of the collision. He just came out of the hold. I forgot his name. We had no conversation. I have been examined before in this case twice; once before Green and Sheldon, and once before Mr. Walker. I was examined before Mr. Walker last August, a few days before he died; and before that I was examined before Green and Sheldon. The schooner went down after the collision in three or four minutes. The vessel's crew came on board of the propeller.

Question. After you left the deck as you have stated, when did you next see the vessel's light?

Answer. After the collision.

Question. Was not the bell to stop the engine and to back her almost simultaneous with the collision?

Answer. No, sir.

Question. Had you been drinking any spirits that evening?

Answer. No, sir.

Question. How long did you stay on deck at the time you saw the mate there?

Answer. Not over half a minute.

Question. What was your vessel loaded with?

Answer. I do not recollect, but she was loaded with grain of some kind. We had a full cargo on board. Capt. Wilson was not on board at this time. He left the vessel in Chicago or Milwaukee, I think, but I cannot recollect. He got on her at Detroit.

Question. Was he on board of the propeller at all after she left Chicago until she got to Detroit?

Answer. I think not.

Question. Do you know the names of any of the crew of the schooner?

Answer. I do not.

Question. When did you go aboard of the propeller and when did you leave her?

Answer. I went on board in March and left her in December, the close of the season. I have sailed on her since that time. These two engines were so situated that I could work them both at the same time. I did not see the schooner after I left the deck until after the collision.

G. T. RANSOM.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And the said Francis P. Billings being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:

I reside in Buffalo, Erie county, New York. I am at present a ship broker. I have been a mariner about twenty-two years. I have been in different capacities. I have been engaged upon the lakes in sailing about sixteen years, a part of the time between Buffalo and Chicago.

Question. Suppose a steam vessel coming from the straits of Mackinaw towards Presque Isle should, within fifteen miles of Presque Isle, discover a sailing vessel bound up one point to the starboard with the wind south-southwest, which side should the steamer pass?

Answer. The steamer ought to give the vessel the inside.

Question. What course should the vessel pursue?

Answer. She should keep her straight steady course up the lake and not vary.

Question. Would it be good seamanship for the vessel to put off?

Answer. I should think not. I should not think it would be using good judgment.

Question. What tacks would a vessel have aboard with such a wind bound west-northwest?

Answer. She would have her larboard tacks aboard.

Question. What sort of a light ought she to hold out indicating her course?

Answer. A bright light at her knight-heads or at her bowsprit end.

Question. Suppose that she put off from that course more into the lake?

Answer. I should judge that she did wrong.

Question. Should there be a change of light to show a change of course?

Answer. If she should be on a wind with her starboard tacks aboard she should show a red light; if on the larboard tack she should show a green light. If the vessel kept her course she ought only to show a bright light with the wind as it was.

Question. If a sail vessel bound up with the wind south-southwest and its course west-northwest, discovered a steamer dead ahead bound down, could there have been a collision between the two at right angles on her larboard side without the vessel putting into the lake more than one point?

Answer. Not unless the propeller altered her course. If the propeller kept up until within a mile or two, she could have squared away and come into her at right angles.

Question. To do that, would it have been necessary for the steamer so to have changed her course as to have run across the lake?

Answer. I think it would. She would have had to keep off about north.

Question. In order to have produced such a collision, how much would the propeller have had to change her course?

Answer. To have produced such a collision as I have spoken of, she would have had to change her course from six to eight points.

Question. Could the propeller after she got abreast of the schooner, when the schooner was going at the rate of six miles an hour and the propeller from eight to ten miles an hour, change her course sufficiently to hit the schooner at right angles amidship?

Answer. Not without running back and getting another start.

Question. What do you mean by running back?

Answer. I mean by going back and coming down on the same course again; in other words, she had got too low down before she made the turn.

Question. If a schooner bound up above Presque Isle was pursuing a course of west-northwest, or one point off from that course, would she be heading into the lake?

Answer. She would be heading about one point from her true course into the lake.

Question. Is the course west-northwest nearly parallel with the main shore there?

Answer. It is.

F. P. BILLINGS.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And being duly cross examined by A. P. Grant, esq., counsel for the appellee therein and on the part and behalf of the said appellee, the said Francis P. Billings saith:

Question. Suppose the schooner going west-northwest and the helmsman sees the light ahead five or six miles off, and puts off his vessel one point, the light being a steamer sailing east-southeast, could the collision occur unless the steamer changed her course, the vessel keeping her course?

Answer. It could not.

Question. How far apart would the two vessels pass?

Answer. About twenty or thirty rods, more or less; I cannot tell exactly.

Question. In the case above supposed, could not the steamer have changed her course so as to have struck the vessel on her larboard side, about midship at right angles?

Answer. It could have been done.

F. P. BILLINGS.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner, etc.

And being duly re-examined by John Ganson, esq., counsel for the appellant therein and on the part and behalf of the appellant, the said Francis P. Billings saith:

Question. You say you think the vessels would have passed twenty or thirty rods apart if the vessel made the steamer one point to the larboard, do you?

Answer. I do.

Question. Could that have given the steamer berth enough to have turned so as to run into the vessel at right angles?

Answer. Not if the vessel kept her direct course.

F. P. BILLINGS.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner

And being duly cross examined again, by A. P. Grant, esq., counsel for the appellee therein and on the part and behalf of the said appellee, the said Francis P. Billings saith:

Question. Suppose the vessel going northwest by west, and the

steamer going east southeast, some five or six miles apart, could not the steamer have changed her course so as to have hit the vessel at right angles near midships, the vessel keeping her course?

Answer. She could have done it, to be sure.

Question. In the case last supposed, if the vessel was going west-northwest, could not the steamer have changed her course so as to have hit the vessel at right angles, near midships, the vessel keeping her course?

Answer. She could have done it, but she would have had first to have put in shore and then come square out.

F. P. BILLINGS.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And the said Albert B. Conkey, being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:

I reside in Cleveland, Ohio; I am a mariner, and have been so eighteen years; I have been mate and master of vessels and steamers on the lakes for the last thirteen years; the last two years I have been master of the Propeller Buffalo.

Question. If a sail vessel sees a steamer some five or six miles ahead, coming in an opposite direction to its course, what is it the duty of the sail vessel to do?

Answer. To keep her course.

Question. Is it good or bad seamanship for a vessel to change its course?

Answer. It is bad seamanship.

A. B. CONKEY.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And being duly cross examined by A. P. Grant, esq., counsel for the appellee therein and on the part and behalf of the said appellee, the said Albert B. Conkey saith:

I am thirty-five years old.

Question. Suppose the vessels the distance apart you have stated, the sail vessel going northwest by west, and the steamer going east-southeast, could they have come together unless the steamer changed her course, the vessel keeping her course?

Answer. They could not.

Question. How far apart would they have passed each other?

Answer. I should think from fifteen to twenty rods.

Question. In the case above supposed, could not the steamer have

changed her course so as to have hit the vessel at right angles, near midships, on the larboard side?

Answer. She could by running in shore, and turning around and coming out.

Question. In the case above supposed, if the vessel was sailing west-northwest, could not the steamer have changed her course so as to have hit the vessel as last above stated?

Answer. She could by running in shore, and turning around and coming out.

A. B. CONKEY.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And the said Oscar F. Jackson being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:

I reside at Dunkirk, New York; I was on the Propeller Monticello at the time of the collision between her and the schooner North Western; I was on board as bar-keeper, but the bar had been shut for two days. I had turned in at the time of the collision. I was on deck prior to the collision before I turned in. I remember that the signal light was lighted upon the propeller; it was located on top of the wheelhouse. I should say it was about half an hour before the collision that I saw the light burning.

OSCAR F. JACKSON.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And the said Oscar F. Jackson being duly cross examined by A. P. Grant, esq., counsel for the appellee therein and on the part and behalf of the said appellee, saith:

I am twenty years old. I remained on the Monticello all that season except the last trip. I turned in that night about nine o'clock; I slept on the right-hand side of the vessel, about the centre of the cabin, in a state-room on the side of the main cabin; I had not been asleep at the time of the collision; I had been in bed about half an hour before the collision; I did not know we had sunk the vessel until we had got to Presque Isle; I did not know we had struck a vessel until we got there. The collision, I suppose, occurred about half-past nine—I am not certain. They told me there was a collision when I got to Presque Isle; this was all I knew of it. I felt the jar of the collision, and it knocked out the light in the cabin, and I thought it was the dock at Presque Isle. I got up at Presque Isle; I did not get up when I felt the jar of the collision. I was called up when we got at Presque Isle. It was about half an hour when I saw the light on the pilot-house before I turned in. I had not heard that there was any complaint of the oil not

being good. I was not attending to the lamps. I should say the night was a star-light night—not very clear. I had been porter on board the boat until about a month before the collision, and then I went to tending bar. The bar had been closed about two days, and I went on deck that night and looked up and saw the light, and the reason why I noticed the light was because while I was porter I had been in the habit of looking at them. I do not recollect of seeing Ransom that evening. I do not remember who was on deck when I was there; I do not remember of seeing any one on deck. I was just by the side of the pilot-house; I should think I was there only about five minutes. It was about half an hour before I turned in. I do not remember of seeing Mitchell, the mate, there; I went there with the waiter and stood there and talked.

OSCAR F. JACKSON.

Subscribed and sworn to before me, this 6th day of April, 1853.

JAS. SHELDON,
United States commissioner.

And I do further certify that the preceding depositions of the said several witnesses, William Dickson, Israel T. Palmer, Augustus Walker, Giles T. Ransom, Francis P. Billings, Albert B. Conkey, Oscar F. Jackson, were each of them reduced to writing by me and signed by the said several witnesses above named in my presence, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Buffalo, April 6th, 1853. JAS. SHELDON,
United States commissioner in and for the said northern district of New York, duly appointed and empowered to take affidavits, acknowledgments of bail, depositions, &c.

A true copy. JAS. SHELDON,
United States commissioner.

Copy of testimony taken before me, Wm. H. Shumway, a commissioner of the U. S. courts, at the city of Oswego, on the 19th day of May, in the year 1853, in a cause pending in the circuit court of the United States for the second circuit and northern district of New York, between Gilbert Mollison, libellant and appellee, and the Propeller Monticello, her tackle, &c., and John Wilson, claimant and appellant.

Robert F. Childs being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith:

I reside at the city of Oswego. Sailing is my occupation, and has been for thirty years. I have sailed in all the lakes, from Chicago to Ogdensburgh, but for most of the time on Lake Ontario. I have been on sail vessels and steamboats, and commanded on each, and am now in command of one of the large class of steamboats on Lake Ontario. I commenced as master on board of a steamboat in April, 1838, and have

been master ever since then. I have been four times each way through lake Huron, in a schooner, as master, in the years 1835 and 1836—twice each year.

Question. Suppose a schooner sailing west-northwest about 12 or 15 miles above Presque Isle, with the wind south-southwest, going from 6 to 8 miles an hour, and being from 6 to 8 miles from Michigan shore, and a man at the helm discovers the sparks of an approaching steamer 5 or 6 miles off, nearly dead ahead, and puts his vessel off one point into the lake, would you approve or disapprove of that order?

Answer. I approve of it.

Question. Suppose a steamer bound down, 5 or 6 miles from shore, sailing east-southeast, makes the light of a schooner, under the circumstances above stated in the last interrogatory, which side of the schooner would it be proper for the steamer to go?

Answer. To the right, on the larboard side of the schooner.

Question. On a fore and aft schooner, with sails all set, could a man at the helm, standing about midships, discover the sparks of an approaching steamer 5 or 6 miles off, if the steamer was to the leeward?

Answer. I think he could not see her at the leeward.

Question. Suppose the schooner sailing as stated in the first interrogatory had put off one point on discovering the sparks, so that her course was northwest and by west, that of the steamer being east-southeast, could a collision have occurred had each vessel then continued its course?

Answer. No, I think it could not.

Question. Under such circumstances, how far apart would the two vessels have passed each other?

Answer. I should think within about a quarter of a mile.

Question. Suppose a schooner to have been sailing northwest and by west after putting off one point, and the steamer east-southeast 5 or 6 miles apart, could the steamer have changed her course so as to have struck the schooner at right angles on her larboard side, the schooner keeping her course—the speed of the steamer being 8 or 10 miles an hour, and that of the schooner from 6 to 8 miles?

Answer. Yes, sir; I think it could be done.

Question. Suppose the same state of facts, except that the steamer, when 5 or 6 miles off, was sailing east by south, could the steamer then change her course so as to hit the schooner at right angles on the larboard side?

Answer. Yes, sir; she could change her course to do so.

R. F. CHILD.

Cross interrogatories propo ed by J. Ganson, esquire, counsel for the appellants.

Question. Suppose a steamer coming down at the place designated in the direct interrogatories put to you, on a course east by south, should hit a schooner bound up on her larboard side, about midships, at right angles, what course must the schooner be going?

785.

Answer. The vessel would have to be heading nearly north to hit her at right angles.

Question. You say that if a schooner was sailing northwest by west, and the steamer southeast by east, they being 5 or 6 miles apart, the steamer could have changed her course so as to have struck the schooner at right angles on her larboard side. How could this have happened?

Answer. By running well down to her and putting her wheel hard a-starboard.

Question. Suppose the steamer was going from 8 to 10 miles an hour, and the schooner from 6 to 8 miles, each pursuing the courses designated in the last interrogatory, could the steamer have so changed her course as to have hit the schooner on the larboard, near midships, at right angles, after the steamer had got nearly abreast of the schooner?

Answer. No; she could not do it when she is abreast of her; she must be at least a quarter of a mile ahead to do it.

Question. Do you think it is good seamanship in the master of a sail vessel, when about to meet a steamer nearly on an opposite course, to change his course?

Answer. I do not think it is bad seamanship if he changes his course according to usages—that is to change it to the right.

R. F. CHILD.

John Eno being carefully examined and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, saith:

I reside in Oswego, and am a seaman; I have followed the business 43 years on sail vessels and propellers, and have been master on each; I have been seven or eight years on propellers, and ceased sailing last fall. I have been master of a vessel since 1815; I have sailed on all the lakes from Ogdensburgh to Chicago; I am acquainted with Lake Huron from Bois Blanc to Presque Isle.

Question. Suppose a schooner sailing west-northwest, about 12 or 15 miles above Presque Isle, with the wind south-southwest, going from 6 to 8 miles an hour and being from 6 to 8 miles from Michigan shore, and a man at the helm discovers the sparks of an approaching steamer 5 or 6 miles off, nearly dead ahead, and puts his vessel off one point into the lake, would you approve or disapprove of that order?

Answer. I should approve of it.

Question. Suppose a steamer bound down, 5 or 6 miles from shore, sailing east-southeast, makes the light of a schooner under the circumstances above stated in the last interrogatory, which side of the schooner would it be proper for the steamer to go?

Answer. To the larboard of the schooner.

Question. On a fore and aft schooner with sails all set, could a man at the helm, standing about midships, discover the sparks of an approaching steamer 5 or 6 miles off if the steamer was to the leeward?

Answer. No; unless he looked under the sails.

Question. Suppose the schooner sailing as stated in the first interrogatory had put off one point on discovering the sparks, so that her course

was northwest and by west, that of the steamer being east-southeast, could a collision have occurred had each vessel then continued its course?

Answer. No.

Question. Under such circumstances, how far apart would the two vessels have passed each other?

Answer. I should suppose nearly within a quarter of a mile.

Question. Suppose a schooner to have been sailing northwest and by west, after putting off one point, and the steamer east southeast, 5 or 6 miles apart, could the steamer have changed her course so as to have struck the schooner at right angles on her larboard side, the schooner keeping her course—the speed of the steamer being 8 or 10 miles an hour and that of the schooner from 6 to 8 miles?

Answer. Yes.

Question. Suppose the same state of facts, except that the steamer, when 5 or 6 miles off, was sailing east by south, could the steamer change her course so as to hit the schooner at right angles on the larboard side?

Answer. Yes.

JOHN ENO.

Cross interrogatories proposed by John Ganson, esq., counsel for the claimants and appellants.

Question. How must the steamer have changed her course so as to have struck the schooner at right angles on her larboard side, under the circumstances mentioned by you on your direct examination?

Answer. She must have changed her course some 6 or 7 points, so as to have run almost north.

Question. Suppose the steamer was going from 8 to 10 miles an hour and the schooner from 6 to 8 miles, each pursuing the courses designated in the last direct interrogatory put to you, could the steamer have so changed her course as to have hit the schooner on the larboard at right angles, near midships, after the steamer had got nearly abreast of the schooner?

Answer. She could not. If she was near abreast, she must be at least from a quarter to a half a mile ahead.

Question. Do you think it good seamanship in the master of a sail vessel, when meeting a steamer nearly on an opposite course, to change his course?

Answer. Yes, sir; because I hold it to be the duty of the master of a vessel to avoid a collision the same as the master of the steamer; still I believe the master of the steamer has the greater responsibility.

JOHN ENO.

John Miner being carefully examined, and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith: I reside in Jefferson county; I am a seaman, and have been for 27 years on sail vessels and a propeller, and have sailed on all the lakes from

Ogdensburgh to Chicago, and have been master 22 years. I am now master of the Danube.

Question. Suppose a schooner is sailing west-northwest about 12 or 15 miles above Presque Isle, with the wind south-southwest, going from 6 to 8 miles an hour, being from 6 to 8 miles from the Michigan shore, and the man at the helm discovers the sparks from an approaching steamer 5 or 6 miles off, nearly dead ahead, and puts his vessel off one point into the lake, would you approve or disapprove of that order?

Answer. I should approve of it.

Question. Suppose the steamer bound down, 5 or 6 miles from shore, sailing east-southeast, makes the light of the schooner, under the circumstances stated in the above interrogatory, which side of the schooner would it be proper for the steamer to go?

Answer. I should pass on the larboard side of the schooner.

Question. On a fore and aft schooner, with sails all set, could the man at the helm, standing about midships, discover the sparks of an approaching steamer 5 or 6 miles off, if the steamer was to the leeward?

Answer. He could not, unless he looked under the booms.

Question. Suppose the schooner sailing as stated in the first interrogatory had put off one point on discovering the sparks, so that her course was northwest by west; that of the steamer being east-southeast, could a collision have occurred had each vessel then continued its course?

Answer. It could not.

Question. Under such circumstances, how far apart would the two vessels have passed each other?

Answer. It might have been a quarter of a mile, or less than a quarter of a mile apart.

Question. Suppose the schooner to have been sailing northwest by west, after putting off one point, and the steamer east-southeast, 5 or 6 miles apart, could the steamer have changed her course so as to have struck the schooner at right angles on her larboard side, the schooner keeping her course; the speed of the steamer being 8 or 10 miles an hour, and that of the schooner from 6 to 8 miles?

Answer. It undoubtedly could.

Question. Suppose the same state of facts, except that the steamer, when 5 or 6 miles off, was sailing east by south, could the steamer then change her course so as to hit the schooner at right angles on the larboard side?

Answer. Yes.

JOHN MINER.

Cross interrogatories proposed by John Ganson, esq., counsel for the claimants and appellants.

Question. If a man stands at the helm midships on the schooner, could he not discover the sparks of the steamer, which was 6 miles distant, ahead at least one point to the leeward?

Answer. No.

Question. When a vessel carries a weather helm, where will the helmsman stand?

Answer. He stands on the weather side of midship.

Question. If he stands in such position could he not see one point to the leeward 5 or 6 miles ahead?

Answer. Yes, sir.

Question. If a vessel is sailing on a course northwest by west, with the wind south-southwest, what kind of a helm would she carry, wind blowing an 8 knot breeze?

Answer. Ordinary vessels carry a weather helm; there is a difference in different vessels; some gripe more than others.

Question. Suppose a steamer was going from 8 to 10 miles an hour and the schooner from 6 to 8 miles, each pursuing the course designated in the last direct interrogatory put to you, could the steamer have so changed her course as to have hit the schooner on the larboard at right angles, near midships, after the steamer had got nearly abreast of the schooner?

Answer. She could after she got nearly abreast.

Question. How far apart, when the vessels were running upon such courses with such speed, must they be, to enable the steamer so to hit the schooner?

Answer. I should want to be a quarter to a third of a mile ahead, and a quarter of a mile abreast.

Question. What do you mean by a quarter of a mile abreast?

Answer. The space or distance between the two vessels.

Question. If the schooner is going from 6 to 8 miles an hour, and the steamer is a quarter of a mile to the larboard of her course, and only a quarter of a mile ahead of the schooner, could the steamer turn so as to hit the schooner at right angles amidships, the steamer going at the rate of 8 or 10 miles when she commences deviating?

Answer. I think it could be done, but the distance would be preferable further ahead of the vessel.

Question. Do you think it good seamanship in the master of a sail vessel, when meeting a steamer nearly in an opposite course, to change his course?

Answer. There is no objection to it, if he turns according to custom, that is to the right; I mean on the lakes; it would be bad on rivers or narrow channels.

Question. Suppose a sail vessel makes the light of a steamer coming in an opposite direction, nearly dead ahead, can the vessel be hit at right angles near midship, without changing her course more than one point?

Answer. No, if both vessels keep the same course.

JOHN MINER.

I certify the foregoing to be copies of the testimony taken before me, this 19th day of May, 1853, in the foregoing described suit, and the interrogatories and cross interrogatories, proposed by the respective

counsel to the witnesses, R. F. Child, John Eno, and John Miner, and their respective answers thereto.

fol. 31, *a* 1s.

WM. H. SHUMWAY,
Commissioner U. S. courts.

Oswego, May 19, 1853.

Copy of the testimony of Gurdon F. Shattuck, taken May 24th, 1853.

I reside in Scriba, Oswego county; am a seaman, and have been about 23 years, and have been engaged on the lakes from Ogdensburgh to Chicago, in the commerce of the lakes, most of the time in sail vessels; I have been master of a vessel since the fall of 1834; was on steamboats the most of one season; I am acquainted with Lake Huron, or rather with the route to Chicago.

Question. Suppose a schooner sailing west-northwest about 12 or 15 miles above Presque Isle, with the wind south-southwest, going from 6 to 8 miles an hour, being from 6 to 8 miles from Michigan shore, and the man at the helm discovers the sparks of an approaching steamer 5 or 6 miles off, nearly dead ahead, and puts his vessel off one point into the lake, would you approve or disapprove of that order?

Answer. I would approve of it; that is the course I should take.

Question. Suppose the steamer bound down 5 or 6 miles from shore, sailing east-southeast, makes the light of the schooner under the circumstances stated in the above interrogatory, which side of the schooner would it be proper for the steamer to take?

Answer. To the left, so as to pass the steamer on her larboard side.

Question. On a fore-and-aft schooner, with sails all set, could the man at the helm, standing about midships, discover the sparks of an approaching steamer, 5 or 6 miles off, if the steamer was to the leeward?

Answer. Not without looking under the foot of the sail or boom; as a man would naturally stand, he would not see them.

Question. How could he look under the boom or foot of the sails?

Answer. By stooping down.

Question. Suppose the schooner sailing as stated in the first interrogatory, and had put off one point on discovering the sparks, so that her course was northwest and by west, that of the steamer being east-southeast, could a collision have occurred had each vessel then continued its course?

Answer. No, it could not, if the steamer was directly ahead.

Question. Under such circumstances, how far apart would the two vessels have passed each other?

Answer. I think not less than a quarter of a mile.

Question. Suppose a schooner to have been sailing northwest and by west, after putting off one point, and the steamer east-southeast, 5 or 6 miles apart, could the steamer have changed her course so as to have struck the schooner at right angles on her larboard side, the schooner keeping her course, the speed of the steamer being 8 or 10 miles an hour, and that of the schooner from 6 to 8 miles?

Answer. I should think that they could, but they would have to be careless, or take some pains to do it.

Question. Suppose the same state of facts to exist, except that the steamer, when 5 or 6 miles off, was sailing east by south, could the steamer then change her course so as to hit the schooner at right angles on the larboard side?

Answer. She might if she did not run too long on that course.

(Signed) G. F. SHATTUCK.

Cross interrogatories proposed by D. H. Marsh, esq., of counsel for claimants and appellants.

Question. Suppose a steamer coming down at the place designated in the direct interrogatories put to you, on a course east by south, should hit a schooner bound up on her larboard side, about midships, at right angles, what course must the schooner be going?

Answer. North and by east.

Question. You say that a schooner sailing northwest by west, and the steamer east-southeast, they being 5 or 6 miles apart, the steamer could have changed her course so as to have struck the schooner at right angles on her larboard side; how could this have happened?

Answer. Run down nearly to her; then, by trying to run across her bows, put her helm hard a-starboard.

Question. Suppose the steamer was going from 8 to 10 miles an hour, and the schooner from 6 to 8 miles an hour, each pursuing the course designated in the last interrogatory, could the steamer have so changed her course as to have hit the schooner on the larboard, near midships, at right angles, after the steamer had got nearly abreast of the schooner?

Answer. They could, but it would be more difficult, and she would have to turn by the time she got within a quarter to half a mile of being abreast.

Question. Do you think it good seamanship in the master of a sail vessel when about to meet a steamer nearly on an opposite course, to change his course?

Answer. I have always considered it was, if she bore to the right.

G. F. SHATTUCK.

A copy. WM. H. SHUMWAY, *Com.*

Copy of the testimony of James B. Estes, jr., taken May 26th, 1853.

I reside in Clayton, Jefferson county, New York; am a seaman by profession, and have followed that business for about 20 years, in both sail and steam vessels. I have navigated all the lakes from Ogdensburgh to Chicago, and am well acquainted with the usually traveled route through Lake Huron to Chicago. I have been master of vessels for 14 years. I am now master of the steamer Niagara, one of the large class of steamboats navigating Lake Ontario, and have been master of her for th two years.

Question. Suppose a schooner sailing west-northwest about 12 or 15 miles above Presque Isle, with the wind south-southwest, going from 6 to 8 miles an hour, being from 6 to 8 miles from Michigan shore, and the man at the helm discovers the sparks of an approaching steamer 5 or 6 miles off, nearly dead ahead, and puts his vessel off one point into the lake, would you approve or disapprove of that order?

Answer. I would approve of it, and would do so.

Question. Suppose the steamer bound down, 5 or 6 miles from shore, sailing east-southeast, makes the light of the schooner under the circumstances stated in the above interrogatory, which side of the schooner would it be proper for the steamer to take?

Answer. She would also sheer to the right hand, or should do so.

Question. On a fore and aft schooner with sails all set, could the man at the helm, standing about midships, discover the sparks of an approaching steamer 5 or 6 miles off, if the steamer was to the leeward?

Answer. No, sir, if standing up.

Question. Suppose the schooner sailing as stated in the first interrogatory, and had put off one point on discovering the sparks, so that her course was northwest and by west, that of the steamer being east-southeast, could a collision have occurred had each vessel then continued its course?

Answer. No.

Question. Under such circumstances, how far apart would the two vessels have passed each other?

Answer. Perhaps a quarter or a half of a mile, supposing the steamer goes 8 to 10 miles an hour, the schooner 6 to 8, and they are 6 miles apart when the schooner puts off.

Question. Suppose a schooner to have been sailing northwest and by west, after putting off one point, and the steamer east-southeast, 5 or 6 miles apart, could the steamer have changed her course so as to have struck the schooner at right angles on her larboard side, the schooner keeping her course, the speed of the steamer being 8 or 10 miles an hour, and that of the schooner from 6 to 8 miles?

Answer. She could, certainly.

Question. Suppose the same state of facts to exist, except that the steamer, when 5 or 6 miles off, was sailing east by south, could the steamer then change her course so as to hit the schooner at right angles on the larboard side?

Answer. Yes.

(Signed) J. B. ESTES, Jr.

Cross interrogatories proposed by D. H. Marsh, esq., of counsel for the claimants and appellants.

Question. Suppose a steamer coming down, at the place designated in the direct interrogatories put to you, on a course east by south, should hit a schooner bound up on her larboard side about midships at right angles, what course must the schooner be going?

Answer. North by east.

Question. You say that a schooner sailing northwest by west and

the steamer east-southeast, they being 5 or 6 miles apart, the steamer could have changed her course so as to have struck the schooner at right angles on her larboard side; how could this have happened?

Answer. By following the vessel's light and continuing to follow it, putting the helm to the starboard.

Question. Suppose the steamer was going from 8 to 10 miles an hour and the schooner from 6 to 8 miles an hour, each pursuing the course designated in the last interrogatory, could the steamer have so changed her course as to have hit the schooner on the larboard near midships at right angles, after the steamer had got nearly abreast of the schooner?

Answer. No, sir.

Question. Do you think it good seamanship in the master of a sail vessel, when about to meet a steamer nearly on an opposite course, to change his course?

Answer. Yes.

J. B. ESTES, JR.

I certify the foregoing to be a true copy of the deposition of James B. Estes, junior, taken before me this day in the above mentioned cause.

WM. H. SHUMWAY,
Com. U. S. courts.

Copy deposition taken before Wm. H. Shumway, a commissioner of the U. S. courts, on the 20th day of June, 1853, in a suit pending in the U. S. circuit court between Gilbert Mollison, libellant and appellee, and the Propeller Monticello, John Wilson, claimant, appellants, on the part of the appellee.

Joseph Braman, being sworn, testified: I reside in the city of Oswego, and am a seaman. I have been a seaman about 16 years. I am now master of the schooner Wayne. I have sailed on all the lakes from Chicago to Ogdensburgh.

Question. Did you know the schooner North Western, and were you ever aboard of her; and if so, when and in what capacity?

Answer. Yes, I did know her, and was on board of her in the year 1850. I was master of her at the time.

Question. What was her tonnage, and who constituted her crew at the time you was on board of her?

Answer. Her tonnage was 217 tons, I believe. Solomon Gibbs was master; I was mate; Francis H. Granger, Joseph Ketchly, Thomas Beckwith, Erastus Hermian and Robert Kerr before the mast, and John Andrews cook.

Question. Were you on board of the schooner on the trip on which she was lost?

Answer. Yes, sir.

Question. When and where was she lost?

Answer. She was lost in the last of September or first of October,

1850, about 14 miles above Presque Isle on Lake Huron, and about 6 or 7 miles from Michigan shore.

Question. About what hour of the night was she lost, and what enabled you to recollect the time?

Answer. At about half-past eight in the evening. It was my watch on deck, and I had been on watch about half an hour.

Question. What was your hour to go on watch?

Answer. Eight o'clock.

Question. At what hour did you pass Presque Isle that afternoon.

Answer. I should think about six o'clock. It might have been a little later than six.

Question. After passing Presque Isle what was your course?

Answer. West-northwest.

Question. When did you change this course, and to what course was it changed?

Answer. It was changed right after we saw the sparks of the propeller to northwest by west.

Question. Who first discovered the sparks of the propeller?

Answer. I think it was Mr. Granger.

Question. Who constituted your watch, and who was on deck at that time?

Answer. Myself, Granger, and Ketchly were in the watch; all of them were on deck, together with Captain Gibbs and Mr. Beckwith.

Question. Who was your helmsman, and who was your lookout?

Answer. Joseph Ketchly was the helmsman and Granger the lookout.

Question. Had you a signal light on board of the schooner? If yea, where was it?

Answer. Yes, sir. We had a large signal light sitting on the provision chest at the time we first saw the sparks.

Question. Was there any thing in the way to prevent this light being seen by vessels on the lake? If yea, state what and how it was situated.

Answer. I should think there was nothing to prevent its being seen ahead; it would reflect all around; the foremast was between the light and the vessel's head.

Question. What became of the light?

Answer. Captain Gibbs ordered one of the men, Beckwith I think, to carry it forward and hold it over the weather or larboard cat-head.

Question. How long was the light held in that position?

Answer. Until about the time of the collision when the boat struck us.

Question. How do you know that you was sailing west-northwest, and that after you put off one point your course was then northwest by west?

Answer. I went aft and looked at the compass; I stayed there two or three minutes to see that she was kept steady on that course; I also saw the compass before her course was altered. When Captain Gibbs gave the order, I went aft to the man at the helm and told him to put her off and keep her on that course; by the time I got aft the vessel was on

her course northwest by west, and I told the helmsman to keep her steady.

Question. About how far off were the sparks when you first saw them, and in what direction from your vessel?

Answer. I should think seven or eight miles off, and right dead ahead.

Question. After you put your vessel off northwest by west, how did the sparks then bear on your vessel?

Answer. They bore about one point off our larboard bow.

Question. How long did you continue your vessel on the course northwest by west, and why and how was it changed?

Answer. She was kept on that course till our light shone on the propeller's bow. Captain Gibbs hailed the propeller, and told them that she was coming into us or something of that kind, and he ordered the helmsman to put *the helmsman to put* his helm hard up and let go the mainsheet.

Question. What then took place?

Answer. The helm was then put hard up and I started to go and let off the mainsheet, and I just got my hand on the sheet at the time she struck.

Question. Could the vessel have felt the helm so as to have changed her course to any extent after this order was given and before the collision?

Answer. No, sir; I should not think any, not more than a quarter of a point any how.

Question. From the time you first the sparks until the collision, had your vessel's course been changed in any respect other than you have mentioned?

Answer. No, sir; not any.

Question. What was the effect of the collision, and how soon did the vessel go down?

Answer. She struck us aft of the forward gangway about midships, on the larboard side, at about right angles, and cut through the plankshin and two deck planks and down to the bilge; she went down in less than three minutes from the time she struck us.

Question. What became of the crew?

Answer. We got the boat down, got into it and went on board the propeller. As soon as the propeller struck us Captain Gibbs took the light and held it over the place where she struck us, to see what damage was done, and told those on the propeller not to leave us until he saw what damage was done to the vessel. In the meantime the man at the helm went to clearing away the boat, and as soon as Captain Gibbs looked over he said she would go down in two minutes, and we all took to the boat at once; we just got clear of her as she went down.

Question. What kind of a night was it?

Answer. It was a very fine night; the wind was off the land about south-southwest, there was no moon; it was not a very dark night.

Question. Could you distinguish the land?

Answer. We could just see the land and the loom of it.

Question. Suppose the propeller had kept her course after you put off your course to northwest by west, could a collision have occurred between the vessels?

Answer. No, sir; she could not have done it.

Question. How far apart would you have passed each other?

Answer. If she had kept her course we must have passed nearly half a mile apart.

Question. When did you discover that the propeller had changed her course?

Answer. Not until she was nearly abreast of us.

Question. What did you then discover as to her course?

Answer. I discovered all at once that she was nearing us very fast, did not go past us; I was standing forward leaning over the gangway watching her; I think I told Captain Gibbs that the propeller was trying to cross our bows; by that time our light shone on her bows, so that we could see the shape of the propeller; she was heading right on to our bows, and then Captain Gibbs hailed her.

Question. Did you hear any orders given on the propeller; if so, what?

Answer. I am certain I heard some one sing out, port on board of the boat; that is all until about the time she struck us, when I heard the bell ring to stop the engine.

Question. Was the engine in operation at the time the propeller struck the schooner?

Answer. Yes, sir; I think the engine did not stop until after she struck.

Question. Was there any reply from the propeller to Captain Gibbs's hail?

Answer. I think not anything, except "to port the helm."

Question. Was there any signal light burning on the propeller?

Answer. Not any that I saw; I think that if there had been one, I should have seen it.

Question. Did you see any light on board the propeller until after the collision?

Answer. No, sir; I saw no light, nor any thing to tell what she was but the sparks.

Question. What was yourself and those on the schooner doing from the time when you first saw the sparks until the collision?

Answer. We were doing only what I have before stated, and watching the sparks of the approaching vessel.

Question. What was the schooner worth at the time she was lost?

Answer. I should think from the way vessel property was at the time, she was well worth $6,000.

Question. How many bags of salt were on board, and what were they worth?

Answer. There were 1,200, and worth about one shilling a bag at Oswego.

Question. When the light was held over the weather cat-head, was there anything to prevent it being seen by a vessel in the direction of the sparks?

Answer. No, sir; not anything.

Question. What was the speed of the propeller from the place of collision to Presque Isle?

Answer. I should think somewhere about 10 knots.

JOSEPH BRAMAN.

On cross examination by the claimant's counsel, testified as follows:

Question. Have you ever owned or built a propeller?

Answer. No, sir.

Question. How do you know that the vessel was worth $6,000?

Answer. I know by the way they were selling vessels at that time; the vessel was well built, had the best of timber in her, and was well furnished with everything that any vessel needed, and was almost a new vessel; she was three years old.

Question. What vessel do you know of having been sold at that time to which you refer in answering the former question?

Answer. I cannot recollect the names of any vessels sold that season, but recollect that several were sold.

Question. What kind of a vessel did you suppose was approaching when you saw the sparks?

Answer. I supposed it to be a steam vessel of some kind.

Question. Tell how you know that the engine on board the propeller had not stopped at the time of the collision?

Answer. By the noise her wheel made in the water.

Question. Is that all the way you know?

Answer. Yes, sir; I heard the bell ring, and that is all.

Question. Did you hear the bell ring more than once before the collision?

Answer. No, sir.

Question. Do you know whether the wheels were turning backwards or forwards when you heard the noise?

Answer. I could not say as to that; I should think they were turning ahead when the propeller was going ten miles an hour.

Question. What makes you think the propeller was going ten miles an hour?

Answer. From the way she struck us; she could not go into a vessel in that way unless she was going very fast.

Question. How long was it between the time you first saw the sparks of the propeller and the collision?

Answer. I should think it was about 25 minutes; I did not look at the time, but I should judge it was about that time.

Question. How did you stand by the man at the wheel at the time Captain Gibbs gave the order?

Answer. I should think some 2 or 3 minutes.

Question. How long did you stand at the gangway looking at the propeller just before the collision?

Answer. Probably 4 or 5 minutes.

Question. Could you tell the course of the propeller by her sparks?

Answer. No, sir; I do not think we could tell her course by her sparks.

Question. You say, if the propeller had kept on her course after the North Western had changed hers, that there could have been no collision; what was the course of the propeller before that time?

Answer. We supposed her course to be east-southeast, as that should be the course of vessels bound down on that part of Lake Huron.

Question. When the wind is south-southwest, is there more than one course for a sail vessel to take, bound up or down between Presque Isle and Bois Blanc?

Answer. To the south pass at Bois Blanc from Presque Isle the course is west-northwest for vessels going up, and for vessels going down east-southeast.

Ques. Is there any other navigation between Presque Isle and Bois Blanc than the direct course up and down, unless vessels are compelled to go out of it by stress of weather?

Ans. There is no other, except when vessels go the N. passage by Bois Blanc; then they change one point.

Ques. How do you calculate how far apart the propeller and the North Western would have passed each other, had the propeller not changed her course; you say half a mile?

Ans. By altering the vessel's course a point, running 6 or 7 miles would fetch them apart about that distance.

Ques. When you first saw the course of the propeller, you say her course was across your bows; are you sure of that?

Ans. Yes, sir, I am sure of it; I saw the shape of the boat.

Ques. Are you sure she struck you at right angles?

Ans. Yes, sir.

Ques. What course must the propeller have been going to have struck you at right angles?

Ans. She must have been heading about N. E. by north.

Ques. Where would she have gone to had she kept on that course without changing it?

Ans. She would have gone to the Sault of St. Mary, or somewhere about there.

Ques. Did you look at the compass from the time you left the helmsman until the time of the collision?

Ans. I looked at it once after that.

Ques. Where was that?

Ans. It was some time between the time I left there and the time I looked over the gangway.

Ques. Where was the vessel's light at the time you and the captain were looking over the gangway?

Ans. The capt. was not looking over the gangway, as I know of,

at the time I was looking over the rail; the light was on the weather cat-head, and the captain stood near it forward.

Ques. You say Granger was the lookout; where was standing at the time Capt. Gibbs gave the order to hold the light over the weather cat-head?

Ans. He was somewhere forward; I can't tell where.

Ques. Where was he afterwards?

Ans. He was walking the deck forward, near the captain.

Ques. How was the light held over the cat-head; by hand or some other way?

Ans. A man set it on the top of the cat-head, and held it there.

Ques. Describe the lamp.

Ans. It was one of Collins's signal lamps, a very large light, and as good a light as I ever saw a vessel have; it was a signal lantern; we were running fair and showed nothing but a white light.

Ques. What enables you to tell the time between your first seeing the propeller by the reflection of your light, and the time of the collision, and the time between the collision and the sinking of the vessel?

Ans. I thought of the time after we got in the boat, and we all thought it about 3 minutes until the vessel went down. The time between our lights reflecting upon the propeller and the time she struck us was not half a minute.

Ques. What was the order of Capt. Gibbs to the helmsman; was it not this—to keep her off a point?

Yes, sir; that was the order when we first saw the sparks.

Ques. Did you have more than one light on the vessel?

Ans. Only one on deck; I mean the one held up over the cat-head.

JOSEPH BRAMAN.

Addition cross interrogatories proposed by appellee's counsel.

Ques. Why did you put off your vessel one point at the time you first saw the propeller's sparks?

Ans. To pass the boat and go outside of her, and give her a good berth.

Ques. In an answer to a cross question, you say you heard the propeller's bell ring only once; is that answer as you intend to have it?

Ans. No, sir; I heard it twice—once after she struck us, to back, and once before she struck us.

Ques. May it not be that it was Granger who held the light, instead of Beckwith?

Ans. Yes, sir, it might be; I could not say for certain who it was.

JOSEPH BRAMAN.

Additional cross interrogatories proposed by claimant's counsel.

Ques. At and after collision did not the propeller come to a full stop?

Ans. When she struck us she stopped.

Ques. Did not the propeller cut into the vessel, so that the vessel was fastened into her?

Ans. Yes, sir.

Ques. What you have stated as having taken place between Capt. Gibbs and those on the propeller, as to stopping to see what damage had sustained, did not take place before the propeller backed off?

Ans. The propeller was backing off at the same time.

Ques. The second bell you heard ring, was it not at the time the propeller was backing off, after the collision?

Ans. The propeller backed immediately after I heard the bell, or she started her engine.

Ques. Was it not after the propeller struck you that you heard the second bell?

Ans. Yes, sir, it was.

Question. What did the captain do with the light that he held over the side of the vessel to see the damage?

Ans. After he had looked at the damage he sent it upon the deck, but I would not be positive what he did do with it.

Ques. What became of the light?

Ans. The light was left on board of the vessel, I think.

JOSEPH BRAMAN.

Copy of testimony taken before W. H. Shumway, a commissioner of the U. S. court, on the 20th day of June, 1853, in a suit pending in the U. S. circuit court between Gilbert Mollison, libellant and appellee, and the propeller Monticello and John Wilson, claimants and appellants, on the part of the appellees.

Francis H. Granger being sworn, says: I am a seaman, and have been for seven years; I have sailed on all the lakes from Chicago to Oswego; I am now mate on the schooner Scotland; I was on board of the schooner North Western at the time she was lost, as a seaman.

Question. About what time did the schooner leave Oswego on that trip?

Answer. Somewhere from the 10th to the 15th Sept., 1850.

Question. On what lake and on what day, and about how far above Presque Isle, did the collision occur?

Answer. It occurred on the evening of September 30th, 1850, on Lake Huron, and about 12 or 15 miles above Presque Isle.

Question. At what time did you pass Presque Isle?

Answer. At about six o'clock, I should think.

Question. Whose watch was it on deck that evening, and who were on the watch after 8 o'clock?

Answer. It was the mate's watch after 8 o'clock; Braman was mate; he, Ketchly and myself were in the watch.

Question. How long had you been in the watch that evening when you first discovered approaching sparks?

Answer. From five to ten minutes.

Question. How far off were the sparks when you first saw them, and in what direction from the schooner?

Answer. I should judge, from the speed of the vessel and the time we were coming together, that they were about 8 miles apart; the sparks were dead ahead of us.

Question. How far were you from the Michigan shore?

Answer. From 6 to 8 miles.

Question. Who was on the lookout, and who first discovered the sparks?

Answer. I was the lookout, and I discovered the sparks.

Question. What did you do on discovering the sparks?

Answer. I asked Capt. Gibbs if it was Bois Blanc light; he said it could not be, for we were not high enough up.

Question. What was done on discovering the sparks?

Answer. We watched them about five minutes, and saw that we kept in range of each other, going opposite courses, and then the captain gave the order to keep off one point, and sent the mate aft to see that it was done. We shifted our light before he told the man to put her off one point.

Question. What kind of a light did you have, and where was it?

An. One of Collins's large signal lamps; it was sitting on the provision box, about 4 or 5 feet above the deck, and a plain light.

Ques. What was done with this light?

An. The captain gave an order to have it held on the weather cat-head; Beckwith took it and held it on the cat-head for about a minute, until I got a drink, and then I took it and held it there.

Question. How long did you hold it there?

Answer. Until just at the time of the collision.

Question. What did you do, and why did you leave that place?

Answer. When the light first shone on the propeller's bows she appeared to be heading right where I stood; I supposed she was going to hit where I was, and I run aft, and when I got as far aft as the main-mast she struck us.

Question. Did you look at the compass to know what course you was on before you saw the sparks, or after the vessel had been put off one point?

Answer. I looked at the compass before she was put off.

Question. What was your course at that time?

Ans. West-northwest.

Ques. Was your course changed again after you had put off one point, until the propeller struck the vessel?

Answer. No, sir, she was not, but the order was given to put the helm hard up, but it did not take effect.

Question. Why did not the helm take effect, or why was not the vessel put off?

Answer. No sooner was the helm put up than the propeller struck the vessel.

Ques. What change, if any, did you see in the course of the propeller from the time you first saw her sparks until the collision?

Answer. Just at the time our lights shone on the propeller's bow, I saw that her masts and pipe were in range of each other and with ourselves; and was coming at right angles with the schooner.

Ques. Had you discovered before this that the sparks indicated a swinging course, or a course approaching the course of the schooner?

Ans. The sparks did not give any appearance of a swinging course, or of approaching us, as we could tell by them, until she got nearly abreast of us; until then she appeared to be passing by us; she then appeared not to be passing us, but rather stopping or coming towards us.

Ques. Was any thing said of her coming towards you, or having changed her course; if so, by whom, and what?

Ans. Mr. Beckwith said to the capt., does she not seem to be coming towards us; Gibbs said I guess not; I guess she has stopped her engine; at the same time Mr. Braman said I guess she is trying to cross our bows. The capt. then put his head down close to the water as he could, to see whether he could see any thing coming; just at that time our light shone on the propeller's bows.

Ques. Did the capt. hail the propeller; *is* so, what did he say?

Ans. He did; I don't recollect the words, but the effect of them was that the propeller was coming into us.

Ques. Was there any reply to that hail?

Ans. None that I heard.

Ques. Was the propeller engine in operation at the time she struck the schooner?

Ans. It was.

Ques. Did you hear any bell ring upon the propeller; if so, when?

Ans. I heard the engine bell ring just at the time she struck us, and again just after she struck us.

Ques. Was there any light on the propeller?

Ans. None to be seen until after she struck us.

Ques. Had there been a light burning and standing upon the pilot-house of the propeller, would you not have seen it?

Ans. I should.

Ques. What occurred in relation to the propeller's light after you went on board of the propeller?

(Objected to by appellants as incompetent as to any statement by persons on the propeller.)

Ans. Capt. Gibbs asked why they did not have out a light; Mr. Mitchell was by and answered that there was a light on the pilot-house; John Andrus and myself went to the pilot-house; there was a lamp there, but no light.

Ques. Was the lamp standing erect, or was it turned over?

Ans. It was standing erect.

Ques. Was any thing said by any of the crew of the propeller, as to the quality of the oil; if so, by whom and what was said?

(Same objection as above.)

Ans. *The* was something said either by the steward or Mr. Mitchell, that the oil was so damned poor it would not burn or give a light.

Ques. When the light shone upon the bows of the propeller, did you see any person upon the propeller?

Ans. I did not.

Ques. If any person had been upon the bow or on the pilot-house, could you have seen him at that time?

Ans. I don't know as I should have noticed him.

Ques. What was the speed of the propeller after you went on board to Presque Isle?

Ans. From 8 to 10 miles.

Ques. At what time of the night did the collision occur?

Ans. By our time on board of the vessel, it must have been about half-past eight o'clock.

F. H. GRANGER.

Cross interrogation as proposed by W. H. Green, esq., of counsel, for and on the behalf of the claimants and appellants.

Ques. When the conversation took place in relation to the propeller on the schooner, did the parties to it stand near together and to you?

Ans. They did not; Beckwith was 4 to 6 feet from me; Capt. Gibbs 8 to 10 feet from me, and the mate about midships.

Ques. How far was it from the provision chest to the helm?

Ans. I should judge from sixty to seventy feet.

Ques. How far was the compass from the helmsman?

Ans. It was forward of him from one to two feet.

Ques. How do you know that the schooner did not change her course after putting off a point to the time of the collision?

Ans. I do not know any thing about her course, except what I heard after I looked at the compass.

Ques. Could you see the land that night?

Ans. I noticed it soon after I came on deck at 8 o'clock; I did not notice afterwards whether I could see it or not.

Ques. At the time of the collision how dark was it? Describe it.

Ans. There was no moon; it was all over little clouds, so that only now and then you could see a star.

Ques. How far do you think you could have seen a vessel without any light?

Ans. To the northeast you could have seen a vessel 300 feet, at the S. W. about one hundred and fifty, and right ahead 150 or 200 feet.

F. H. GRANGER.

Copy of testimony taken before Wm. H. Shumway, a commissioner of the U. S. circuit court, on the 20th day of June, 1853, in a suit pending in U. S. circuit court, between Gilbert Mollison, libellant and appellee, and the Propeller Monticello, and John Wilson, claimant and appellant, on the part of the appellee.

Andrew Miller.

I am a ship carpenter, and have been for 20 years, and have kept a

yard in Oswego for nine years, and have been in the habit of building and selling vessels, and building for others' use, for the last 8 or 9 years.

Question. Did you know the schooner North Western, and how long had you known her at the time she was lost?

Answer. I built her, and knew her from the time she came out until she was lost.

Question. Did you own any interest in her; and if so, how long?

Answer. I owned one-half of her, and did until she left port on her last trip; and sold my half while she was in that trip.

Question. Who owned the other half with you?

Answer. Robert Green.

Question. What class vessel was she, and in what condition was she when you sold her?

Answer. She was a first-class vessel, and in first-rate condition.

Question. What was she worth in September, 1852?

Answer. She was worth $6,000 when I sold.

ANDREW MILLER.

Copy of testimony before Wm. H. Shumway, a commissioner of the United States courts, taken on the 20th day of June, 1853, in a suit pending in U. S. circuit court, between Gilbert Mollison, libellant and appellee, and the Propeller Monticello, and John Wilson, claimant and appellant, on the part of the appellee.

Moses Myrick.

I reside at the city of Oswego, and am engaged in the milling and forwarding business. Have been in the forwarding business here since 1845, and in milling since 1848. I have been in the forwarding business some 25 years. I have been a vessel owner for 13 or 14 years. From 1845 to 1849 the firm with which I was connected as partner was that of Merick, Davis & Co.; since that time the name of the firm has been M. Merick & Co. I was in the habit almost every year while in the forwarding business of buying and selling vessels. I also freighted a great deal of the wheat I ground in my own vessels.

Question. Did you know the schooner North Western; and if yea, how long did you know her?

Answer. I did know her from the time she came out until she was lost.

Question. What class vessel was she, and how was she furnished and supplied?

Answer. I should judge that she would rate a first-class vessel in the insurance offices. I think she was well furnished. She had good anchors and chains and the ordinary furnishing.

Question. What was she worth in September, 1850?

Answer. I should think that she was well worth $6,000, and that I would have been willing to buy her at that price.

M. MERRICK.

Cross interrogatories proposed by Wm. H. Greene, esq., of counsel for and on behalf of the claimants and appellants.

Question. What would have been the cost of building and fitting such a vessel as the North Western in the season of 1850? (Taken subject to objection.)

Answer. It would have cost about $8,500 to have built and fitted her that season.

Question. Do you know how old she was?

Answer. I think that she run two and half or three seasons.

Question. How much does a vessel depreciate in value in three years by age?

Answer. I should think about one eighth per cent. per annum.

M. MERRICK.

Additional interrogatories by counsel for appellees.

Question. Is the value of lake vessels more or less affected by the business?

Answer. Yes, sir, it is.

Question. Was she worth $6,000 in September, 1850, as other vessels were then selling?

Answer. I think she was.

M. MERRICK.

Copy of testimony taken before William H. Shumway, a commissioner of the U. S. circuit court, for the northern district of New York, at Oswego, on the 18th day of June, 1852, in the cause of Gilbert Mollison, appellee, vs. John Wilson, claimant of the Propeller Monticello, appellant; on the part of said appellant.

(The counsel for the appellee here objects to the taking of the testimony of the witness, Hiram D. Condict, on the ground that he resides within one hundred miles of Canandaigua, the place where the court is held.)

My name is Hiram D. Condict; am in my 32d year of age; reside at Oswego, and am secretary of the Northwestern Insurance Company. The principal office of the company is in the city of Oswego. I have the marine blotter of that company for 1850, containing, as I suppose, a statement of the entries of marine policies for that year. I became secretary of the company in April, 1852.

I find an entry of an insurance upon the schooner North Western, under the date of April 10th, 1850.

Copy entry.—"Robert Green and Andrew Miller, $3,750 on the schooner North Western, for one year from April 17th, 1850, to the 17th day of April, 1851, at noon of each day, to navigate Lakes Erie and Ontario, the bays, rivers, and harbors thereof, as is usual for vessels of her class, to be moored in some safe and good harbor from the first day of December, at noon, to the first day of April at noon."

Note.—"Valuation $5,000. Amount insured $3,750.

5 per cent. - - - -	$187 50
Policy - - - - -	1 50
	$189 00

The book does not show any transfer of the policy. There is an entry on the 17th day of September, 1850, in favor of Gilbert Mollison, as follows:

Gilbert Mollison, 2,617.

$3,750 on schooner North Western, for one year from the 13th day of September, 1850, to the 13th day of September, 1851, at noon of each day, to navigate the waters of Lakes Ontario, Erie, Huron, and Michigan, the bays and rivers and harbors thereof, from Ogdensburgh to the south end of Lake Michigan, as is usual for vessels of her class, saving and excepting that during the life of this policy said vessel shall not navigate any of said waters above Fort Gratiot from the 20th day of November at noon to the first day of April at noon, nor any of said waters below Fort Gratiot from the first day of December at noon to the first day of April at noon, but during said last mentioned period shall be safely moored in some good and safe harbor, to be approved by this company.

Valuation $5,000.

Note.—Amount insured $3,750, at 6 per cent. - -	$225 00
Policy - - - - - - - - - - - -	1 50
	$226 50

The above copies of extracts are copies of the written part of marine policies. I found a paper purporting to be a notice of abandonment of the schooner North Western. The witness here produced the same in these words:

OSWEGO, *December* 21, 1850.

To the North Western Insurance Company.

"I hereby abandon to you as underwriters the schooner North Western, her boat, rigging, apparel, and furniture, she having sunk on Lake Huron, and become a total loss.

"G. MOLLISON."

"Duplicate." OSWEGO, *December* 21*st*, 1850.

Received from the North Western Insurance Company thirty-seven hundred and fifty dollars in full of all demands for loss under policy No. 2,617 on schooner North Western.

"G. MOLLISON."

On another paper exhibited was a receipt as follows:

"Duplicate." OSWEGO, *Oct. 16th*, 1850.

Received from the North Western Insurance Company two hundred and fifty one $\frac{58}{100}$ dolls. on account of loss of schooner North Western, under policy No. 2,617, which said amount is made up of my note due this day, dated Sept. 13th, 30 days, favor Andrew Miller, for $250. Interest on same, $1 58—$251 88.

"GILBERT MOLLISON."

All of which testimony relative to the books *to the books*, policies of insurance, abandonment, and receipt, and papers introduced in evidence, were objected to in due time, and testimony taken subject to objection.

The counsel for appellants here demanded that the papers offered in evidence should be attached as exhibits, copies whereof are above written. The counsel for the appellee objects to the demand on the ground that copies are taken of said papers, and they are private papers not under the control of appellee, and agrees to introduce the same on the trial of the cause.

H. D. CONDICT.

Copy of testimony taken before Wm. H. Shumway, a commissioner of U. S. circuit court for the northern district of New York, at Oswego, on the 18th day of June, 1852, in the cause of Gilbert Mollison, appellee, vs. John Wilson, claimant of the Propeller Monticello, appellant, on the part of said appellant.

The counsel for the appellee here objected to the taking of the testimony of the witness, on the ground that he resides within one hundred miles of Canandaigua, the place where the court is to be held.

Question. What is your name, age, occupation, and where do you reside?

My name is Cortland C. Cooper; am 59 years of age; I reside in the city of Oswego; I am a ship chandler, and keep a provision store, and have done so for 20 years or nearly so. From 1836 to 1849 I owned a number of vessels—at one time seven. I commenced with three the first year; vessel property was very much run down in 1850; I remember a good many vessels sold in that year; in 1849 and 1850 a great many vessels changed hands; did not sell any vessels in 1850; I made an assignment, in 1849, of my vessels, and they were sold by my assignees during the season of 1850. We sold the Fairfield in the fall of 1849, and before we made an assignment; she was sold at Oswego. (The counsel for the appellee here objects to all testimony in relation to the value, sale, or condition of the schooner Fairfield, or any other vessel except the North Western. Testimony taken subject to objection.) Ans. She was a rebuilt vessel; was rebuilt in 1846, I think; I don't recollect her tonnage, but it was something like 200 tons.

What vessels were sold by your assignees during the season of 1850?

Objected to by counsel for appellee, and testimony taken subject to objection.

The schooner Josephine, the Comely, and the Welland. The Josephine was sold in March or April; the Welland in the latter part of summer; the Comely on the last of August or first of September. They were all rebuilt vessels, and were very much enlarged when rebuilt.

Question. When was the Josephine rebuilt?

Objected to by the counsel for appellee, and testimony taken subject to objection.

Answer. In 1845.

When was the Welland rebuilt?

Objected to, and taken as above.

Answer. In 1846.

When was the Comely rebuilt?

Objected to, and taken as above.

Answer. In 1847.

For what prices were these vessels respectively sold by your assignees in 1850?

Objected to, and answer taken as above.

Answer. The Josephine was sold for 1,200 dollars, the Welland for something like 3,500 dollars, and the Comely for 4,000 dollars.

Question. Were the vessels sold at public or private sale?

Objected to, and taken as above.

Answer. They were sold at private sale. I was consulted, and consented to the sale as the best thing I could do under the circumstances. I had to raise money.

Question. How long were these vessels in market before they were sold?

Objected to, and taken as above.

Answer. They were in the hands of the assignees and for sale from the month of March, 1850, until they were sold as above stated.

What efforts were made to sell these vessels, and from what time?

Objected to, and taken as above.

Answer. We made it known (the assignees and myself) from March up to the time that they were sold, that they were in the market and for sale.

Were or were not the prices obtained for these vessels, respectively, the highest prices that could be obtained for them that year?

Objected to, and taken as above.

Answer. I have no doubt that the prices obtained for these vessels were the best prices that could be obtained for them that season. The tonnage of the Comely was 249 tons.

What was her condition at the time of the sale, and her character as a vessel?

Objected to, and testimony taken as above.

Answer. She was a first-class vessel and in ordinary good condition, and a well found vessel, as we term it. The Welland was nearly 200 tons burthen, and the Josephine 136 tons.

C. C. COOPER.

On the cross examination by the counsel for the appellee the witness testified as follows:

The name of the firm at the time we failed in 1849 was Cooper & Barbun. The assignment was made by me of my individual property, and by Cooper & Barbun of the firm property. The vessels were the property of the firm at the time of the assignment. I knew the schooner North Western in 1850, and had known her from the time she came out; she was a first-class vessel; I know of remarkable about her, only she carried a great deal more according to her tonnage than the ordinary run of vessels, and was a profitable vessel; I had frequently been on board of her; was on board of her while she was building, and knew her about as well as I did my own vessels; she was well fitted, furnished, and rigged in every respect. She was well furnished and kept in good condition from the time she came out; never heard of any serious accident to her; I never heard of her being damaged or injured in any way; she was worth from 5 to 6,000 dollars in October, 1850—I think 6,000 dollars.

Were the Welland, the Josephine, and the Comely, respectively, worth more than the prices for which they were sold as stated by you in your direct examined?

Objected to by counsel for appellant, and taken subject to objection.

Answer. They were sold at a great sacrifice, and were worth, in my opinion, a great deal more money. In my judgment the Comely worth $7,000 at the time. The Josephine was pretty well sold; she could not have been worth more than 1,500 dollars. The Welland was worth 44 or 4500 dollars, and had I not been embarrassed, and been able to keep them, I would not have sold them for less than these prices.

C. C. COOPER.

Opened and filed, June 28th, 1853.

At a chamber term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at Cooperstown, in said district, on Wednesday, the 7th day of September, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Samuel Nelson, justice.

GILBERT MOLLISON, libellant and appellee,
vs.
The Propeller MONTICELLO, her tackle, apparel, &c., John Wilson, claimant and appellant.

Whereas, at a special term of the district court of the United States of America for the northern district of New York, held at the city of Auburn, on the sixth day of May, in the year of our Lord one thousand eight hundred and fifty-two, before the honorable Alfred Conkling, then district judge of said district, a certain cause in admiralty of libel, wherein Gilbert Mollison is libellant, and the Propeller Monticello, her

tackle, apparel, &c., James Wilson, claimant, are respondents, came on to be tried, and then and there before the aforesaid district judge was tried; and whereas the said district judge, after hearing the proofs and allegations of the said libellant and maturely considering the same, did, on the day and year and at the place aforesaid, pronounce, order, adjudge, and decide that the collision in the libel set forth occurred as is therein stated; and that the schooner North Western, being the property of the libellant, was thereby wholly lost, together with her cargo, a portion of which was salt, also belonging to the libellant.

And it is further ordered, adjudged, and decreed, that the libellant ought to have and receive, by reason of the premises, the sum of six thousand dollars as the value of the said schooner, and the further sum of one hundred and fifty dollars as the value of the said salt. And it is further ordered, adjudged and decreed, that the claimant above named, within ten days after service upon him or his proctor of a copy of this decree, pay into the registry of the court the aforesaid sums, amounting to six thousand one hundred and fifty dollars, together with the costs of the libellant in this suit to be taxed, and also the fees and expenses of the officers of the court in this suit to be taxed.

And it is further ordered, adjudged and decreed, that if the said claimant shall fail to make the payment above mentioned, as herein before directed, execution do forthwith issue against him and his sureties, in the stipulation whereupon the said Propeller was delivered out of the custody of the marshal in virtue of the warrant heretofore issued in this suit. And it is further ordered, adjudged and decreed, that if the said complainant shall make the said payment as hereinbefore provided, he be forever exonerated upon all other and further payment in the premises.

And whereas the said cause has been removed to this court by an appeal taken herein on the part and behalf of the said claimant and respondent, and this court having heard the proofs and allegations of the respective parties herein, and the argument of counsel, and maturely considered the same, do order, adjudge and decree, and it is hereby ordered, adjudged and decreed by the said court, that the aforesaid decree of the said district court above set forth be and the same is hereby affirmed in all respects. And it is further ordered, adjudged and decreed, that said claimant pay to said libellant said sum of six thousand one hundred and fifty dollars, with interest thereon at seven per centum per annum, from the sixth day of May, eighteen hundred and fifty-two, together with all costs, fees, and charges to be taxed as in said decree is set forth. And it is further ordered, adjudged and decreed, that the aforesaid decree do stand as the decree of this court, and that in addition thereto and the amount therein directed to be paid to the said libellants, it is further ordered, adjudged and decreed, that the said respondents pay into the registry of this court the costs and charges of the said libellant on the appeal in this cause to be taxed, and also the lawful fees and charges of the officers of the court on said appeal in

this behalf to be taxed; which said sums, when ascertained and taxed, are to be added to the sums set forth in the aforesaid decree, and to be collected in the manner specified in said decree.

Filed Sept. 17, 1853.

U. S. DIST. COURT,
Northern dist. of New York.

GILBERT MOLLISON, libellant and appellee,
vs.
The Propeller MONTICELLO, John Wilson, claimant, respondent, and appellant. } In admiralty.

Libellant's costs—Proctor's fees.

Ret'g fee	$3 75
Dr. libel fol. 18 and cop. $5 06; cop. to file, 13s. 6d.	6 75
Dr. rep. fol. 2 and cop. 4s. 6d.; cop. to file, 1s. 6d.	0 75
Do. to serve, 1s. 6d.; serv'g with notice, 3s.; post. 11	0 67
No. of trial to resp't, 3s.; do. to cl'k, 3s.; post. 11	0 86
Dr. subp. fol. 3 and cop. 84; Dr. 5 tickets fol. 2, each 15s.	2 72
Proctor's fee on trial, 5s.; cop. pleadings for trial, 37	4 10
Arguing cause on final hearing	1 88
Dr. aff'ts to oppose mo. for rehearing fol. 20, cop. and oaths	5 88
Attending on hearing	0 63
Serving cop. decree with no. 3s.; post. 11	0 49
Dr. costs fol. 3 and cop. 6s. 9d.; cop. to serve, 3s.	1 22
Serv'g with no. 3s.; attending tax, 4s.	0 88
Post not before ch'd, $2 93; telegraph charges, $2 32	5 25
	$35 83

Advocate's fees.

Retainer (David Wright, esq.)	$3 75	
Perusing and amending libel	1 25	
Attending on return of proofs	63	
Do. for hearing of cause	63	
Do. on hearing of motion	63	
Arguing motion	1 25	
Do. on final hearing	5 00	
		13 14

Marshal's fees.

Seizing vessel and serving process	$21 71	
Serv'g subp. on 5 witn's	10 00	
Travel making such service, 26 miles	3 12	
		34 83
Clerk's fees as paid		13 39

Witnesses' fees.

5 witnesses, 1 day's attendance each - - - -	$6 25	
Travel as per aff't, 720 miles - - - - -	36 00	
		42 25
		$139 44

U. S. CIRCUIT COURT,
Northern district of New York.

GILBERT MOLLISON, libellant and appellee,
vs.
The Propeller MONTICELLO, John Wilson, claimant, respondent, and appellants.

Costs on appeal—Proctor's fees.

Retainer, $3 75; no. of do. 3s. - - - - -	$4 13	
No. of trial, June circ't, 1852 - - - - -	38	
Do. to cl'k, 3s.; post. 3+6+3 - - - - -	50	
Dr. subp. fol. 3 and cop. 84; Dr. 5 tickets fol. 2, each 15s. - - - - - - - - -	2 72	
Attend'g circuit - - - - - - - - -	63	
Same charges for Oct. circuit, 1852 - - -	4 23	
June 18, '52, attend'g exam. of claimant's witn's.		
" " " of Robert Green -	63	
" " " C. C. Cooper - -	63	
" " " Robert Condit -	63	
" " " John B. C. Morris -	63	
Oct. 27 & 28, " " " James Mitchell -	63	
Ap. 6, '53, " " " William Dickson -	63	
" " " Francis P. Billings -	63	
" " " Israel T. Palmer -	63	
" " " Albert B. Conkey -	63	
" " " Giles T. Ransom -	63	
		18 89
		$158 33
" " " of Augustus Walker	63	158 33
" " " Oscar F. Jackson -	63	
Nov. 9, Preparing papers, procuring order, Dr. interrog. on exam. de bene esse, of following witnesses:		
John Minor, $2 50. Serving with do., 3s. - -	$2 88	
Dr. subp., fol. 3 and cop. 84; dr. ticket, fol. 2, 3s.	1 22	
Proctor attending on examination - - -	63	
Same charges for witness John Eno - - -	4 73	
" " " Gordon F. Shattuck -	4 73	
" " " Robert F. Childs - -	4 73	

Same charges for witness James Estes - - -	$4 73	
" " " Moses Merrick - -	4 73	
" " " Andrew Miller - -	4 73	
" " " Joseph Braman - - -	4 73	
" " " Francis H. Granger -	4 73	
No. of trial, June circ't, 3s.; no. to clerk, 3s. -	75	
Dr. affi't of service, fol. 2, cop. and oath - -	69	
Arg. cause on final hearing - - - - -	1 88	
Abbreviating pleadings for trial, fol. 18, at 3d. -	56	
Dr. final decree, fol. 9, and cop. - - - -	2 53	
Cop. to serve 84; serving with no. 3s. - - -	1 22	
Dr. costs, fol. 8, and cop. 18s.; cop. to serve, 3s.	2 63	
Serving with no. 3s.; attending tax 4s. - - -	88	
Postage on appeal, not before included - - -	3 19	
Prospective - - - - - - - - -	1 00	
Cop. order of affirm., fol. 1, 9; no. of do., 3s. -	47	
Dr. affit. of attend. witnesses, fol. 7, cop. and oath	2 09	
Dr. affit. disbts., fol. 2, cop. and oath - - -	69	
		62 41
		$220 74
Amount brought over - - - -		220 74

Advocate's fees.

Return (David Wright, esq.) - - - -	$3 75	
Attending for hearing 3 terms - - - -	1 88	
Do. in the exam. of 19 witnesses - - - -	7 88	
Do. for hearing of cause - - - - -	63	
Arg. on final hearing - - - - - -	5 00	
		19 14

Marshal's fees.

Serving subpœnas on 11 witnesses - - -	22 00	
		22 00

Clerk's fees.

Fees already paid - - - - - -	29 16	
Fees to be paid—other services - - - -	6 00	
		35 16

Commissioner's fees.

Taking depositions - - - - - - -	52 80

Witnesses' fees.

For attendance and travel, as per affits. - -	89 55	
Less - - - - - - - - - - -	16 50	
		73 05
		$422 89

Taxed this bill of costs this 18th day of October, 1853, at $422 89.

A. A. BOYCE, *Clerk.*

Filed, Oct. 31, 1853.

IN UNITED STATES CIRCUIT COURT,
Northern district of New York.

GILBERT MOLLISON, libellant and appellee,
vs.
THE PROPELLER MONTICELLO, her tackle, apparel, &c., John Wilson, claimant and appellant.

The said libellants, as appears from the transcript sent from district court to this court, and which is annexed, procured a decree therein against claimant on the 6th day of May, 1852, for six thousand one hundred and fifty dollars, from which claimant appealed to this court by petition, filed May 14, 1852, and the citation in which was filed June 23, 1852, with evidence of service.

The transcript from district court was sent and filed here October 19, 1852, all which appears by the papers hereto annexed. The appeal was duly brought on and argued at June term, 1853, and on the 8th September, 1853, a decree was entered herein affirming the decree of said district court, with costs.

The costs herein are taxed at four hundred and twenty-two dollars and eighty-nine cents. Interest on decree to October 31, 1853, from 6th May, 1852, is for 1 year 5 months and 25 days, ($15 60,) five hundred thirty-nine dollars and thirty-six cents. The amount of decree, as affirmed, is six thousand one hundred and fifty dollars—making a total amount of seven thousand one hundred and twelve dollars and twenty-five cents as the decree of this court hereby.

Wherefore the said papers, as required, are hereto annexed, and a final judgment and decree docketed in favor of the said appellee against the said appellant, for seven thousand one hundred *hundred* and twelve dollars twenty-five cents, ($7,112 25,) and judgment signed this 31st day of October, 1853.

A. A. BOYCE, *Clerk.*

Filed, Oct. 31, 1853.

Petition of Appeal.

CIRCUIT COURT OF THE UNITED STATES,
Northern district of New York.

GILBERT MOLLISON, libellant and appellee,
vs.
THE PROPELLER MONTICELLO, John Wilson, claimant, respondent, and appellant.

To the Supreme Court of the United States.

The petition of appeal of the above named John Wilson respect-